

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 4

May 7, 2020

108176 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ADRIANA CORRAO v IAN BENNETT

Affirmed in part, reversed in part, and remanded.

Decision En Banc:

Sean C. Gallagher, J., Eileen T. Gallagher, A.J., Patricia Ann Blackmon, Mary J. Boyle, Frank D. Celebrezze, Jr., Eileen A. Gallagher, Raymond C. Headen, Larry A. Jones, Sr., Kathleen Ann Keough, Mary Eileen Kilbane, Anita Laster Mays, and Michelle J. Sheehan, J.J., concur.

Decision of the Merit Panel:

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *En banc; service by publication; reasonable diligence; internet search; available steps; circumstances; default judgment; motion to vacate; affidavit; counsel; police report; address; insurance company; inference; rebut; contradict; R.C. 2703.14(L); Civ.R. 4.4(A); remand; hearing; damages.*

En banc decision held that an internet search is not a mandatory prerequisite to establishing reasonable diligence for service by publication but, instead, is just one of many available steps a party may endeavor to take in order to satisfy his burden under Civ.R. 4.4, and whether reasonable diligence has been exercised will depend upon the facts and circumstances of each particular case. Panel decision affirmed trial court's denial of motion to vacate default judgment, except with regard damages. Service by publication was proper and the affidavit of plaintiff's counsel, which stated that counsel had twice attempted service at the address provided in the police report and had tried to obtain a current address from defendant's insurance company, was sufficient to establish the exercise of reasonable diligence to locate defendant's address and to give rise to an inference of concealment, and the defendant failed to contradict the plaintiff's exercise of reasonable diligence to rebut the inference of concealment. Case was remanded for a hearing to determine the proper amount of damages.

108554 GARFIELD HTS. MUNI. C CRIMINAL MUNI. & CITY
CITY OF INDEPENDENCE v BERNARD J. CORRADETTI

Reversed and remanded.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

CASE DECISION LIST

108584 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DIANE BOHL v ALUMINUM COMPANY OF AMERICA, INC., ET AL.

Affirmed.

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

KEY WORDS: *Expert report; Civ.R. 26; Loc.R. 21.1; separation of witnesses; Evid.R. 615; office visit note; hearsay; medical records; hospital records; self-authenticating; Evid.R. 902(10); R.C. 2317.422; business records exception; Evid.R. 803(6); certification; motion in limine; failure to object; leading questions.*

Trial court acted within its discretion in denying motion for separation of witnesses and allowing defense expert witness to read transcript of plaintiff's expert testimony where plaintiff failed to provide the defense with an expert report in advance of trial.

Medical records of plaintiff's treating physician were admissible as self-authenticated business records because they were properly certified by the hospital.

Trial court properly denied motion to exclude expert witness testimony where expert's testimony was consistent with opinions set forth in his expert report and addendum to the expert report.

108659 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CHRISTOPHER WHIPPLE v ESTATE OF CAROLINE PRENTISS, ET AL.

Reversed and remanded.

Eileen A. Gallagher, J., and Frank D. Celebrezze, Jr., P.J., concur; Kathleen Ann Keough, J., concurs with separate opinion.

108661 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KWAIMANE JOHNSON

Affirmed.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

CASE DECISION LIST

108667 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN BRECHEN

Affirmed.

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

KEY WORDS: *Guilty plea, ineffective assistance of counsel; mental health evaluation; consecutive sentences.*

Appellant claims, for the first time on appeal and without offering any evidence from the record in support, that his trial counsel's performance was deficient in failing to request a psychiatric evaluation for sanity and failing to request evaluation for mental health docket eligibility. The claim is without merit because there is no indication in the record to show that such a mental health evaluation was warranted. Regarding appellant's consecutive sentences, our review shows the trial court made the requisite statutory findings and the findings are supported by the record.

108738 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v FRANCISCO FIGUERO

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *R.C. 2953.08(G)(2)/appellate review; R.C. 2929.14(C)(4)/consecutive sentences.*

The trial court made the required statutory findings at appellant's sentencing hearing and incorporated those findings into the trial court's sentencing entry. Appellant's sentence is not contrary to law, and appellant has failed to show that the record does not support the trial court's findings.

108869 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES F. BARKLEY

Affirmed.

Sean C. Gallagher, P.J., and Patricia Ann Blackmon, J., concur; Anita Laster Mays, J., dissents with separate opinion.

KEY WORDS: *Crim.R. 32.1; presentence motion to withdraw a guilty plea; abuse of discretion.*

The trial court did not abuse its discretion by denying the

CASE DECISION LIST

(Case 108869 continued)

appellant's Crim.R. 32.1 presentence motion to withdraw his guilty plea. The trial court conducted a complete and impartial hearing on the motion and gave full and fair consideration to the plea withdrawal request. Appellant was represented by highly competent counsel, he expressed his satisfaction with trial counsel at the time of his plea, and he voluntarily chose to accept a favorable plea deal.

108908	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOHN SWORTCHEK			

Reversed and remanded.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Raymond C. Headen, J., concur.