

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 28, 2020

108137 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM TELL v CITY OF CLEVELAND

Affirmed.

Frank D. Celebrezze, Jr., P.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Administrative appeal; R.C. 2506.04; due process; preponderance of the evidence.*

The trial court's judgment affirming the decision of the Civil Service Commission is supported by a preponderance of substantial, reliable, and probative evidence in the record. Appellee did not violate appellant's due process rights in terminating appellant's employment.

108252 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
VLADIMIR B. VICTOR v MARINA KAPLAN, ET AL.

Affirmed in part; reversed in part; and remanded.

Michelle J. Sheehan, J., Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, P.J., concur.

KEY WORDS: *Divorce; marital property; separate property; tracing; abuse of discretion; credibility; lost future wages; expert; marital debt; R.C. 3105.171; proportional share tracing methodology; Evid.R. 702; marital labor; spousal support; R.C. 3105.18; attorney fees; Civ.R. 53(D)(3)(b)(iii); Loc.R.27; supplemental objections; praecipe; Civ.R. 24(A); motion to intervene; Civ.R. 75(B); contempt order; sanction; credit; personal property; loss; child support.*

Wife's settlement proceeds from a former employer are marital property because the settlement was executed during the marriage, payments would begin within seven days of execution of the agreement, and the proceeds from the settlement reflected lost future wages-- income Wife would have earned during the marriage.

Where the trial court found Wife's expert witness credible and his testimony helpful, and where Husband failed to submit expert evidence demonstrating that Wife's expert's proportional share tracing methodology is faulty or that the purportedly "missed" deposits or incomplete report resulted in the expert's inability to accurately trace Wife's separate property, the trial court did not err in permitting the expert's testimony. The trial court did not abuse its discretion in concluding that Husband failed to rebut Wife's expert testimony concerning Wife's traceable separate property and Husband's marital labor did not contribute to the growth of Wife's financial accounts. To the extent the trial court based its award of Wife's separate property interests in the properties located on

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Bendemeer, Brentwood, and Edgewood on its erroneous conclusion that the settlement proceeds are Wife's separate property, the trial court erred. The trial court did not err in finding Husband had an ownership interest in the Antisdale property where Husband provided only his self-serving testimony regarding his sister's interest in the property and the magistrate found Husband's testimony not credible.

The court's allocation of the marital debt was supported by the record.

The trial court did not abuse its discretion in failing to award spousal support to Husband. The judgment contains sufficient detail demonstrating that the court's decision not to award spousal support to Husband is fair, equitable, and in accordance with the law.

The trial court did not abuse its discretion in failing to award Husband attorney fees.

The trial court did not abuse its discretion in failing to order a distributive award.

The trial court abused its discretion when it prohibited Wife from filing supplemental objections where Wife provided sufficient notice to the court of her intent to file supplemental objections and Husband had previously filed a praecipe with the court in accordance with the local rules.

The trial court abused its discretion when it permitted Wife's former counsel to intervene in the divorce proceedings where counsel does not have an interest in the marital property, its interest is only in recovering its own attorney fees, and counsel has an alternate means to protect its interests in the form of civil litigation to collect its fees.

The trial court did not abuse its discretion in ordering a \$50,000 sanction against Wife for violating the court's temporary restraining orders.

As the record supports Wife's contention that Husband's \$77,000 in attorney fees were in fact paid and they served as an advance against Husband's property division, the trial court's failure to credit Wife for the payment is an abuse of discretion. The trial court's failure to credit Wife for paying all of the \$20,000 in guardian ad litem fees, however, is not an abuse of discretion where the parties agreed to pay equal shares of the fees and the record supports, at best, Wife's payment of \$5,000 to the guardian ad litem.

The trial court abused its discretion in awarding Husband \$12,250 for loss of personal property where there is nothing in the record that supports this assigned value to Husband's purportedly lost items.

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The trial court's award to Husband for his share of the Bendemeer property, when Wife had previously paid Husband \$43,000 for his share of the property, does not constitute a duplicate award, or a "double dip," because the trial court's initial award of \$50,000 to Husband from the proceeds of the sale of the Bendemeer property was compensation for the funds Wife withdrew in violation of mutual restraining orders and was a sanction for Wife's contempt.

The trial court did not abuse its discretion in the division of certain personal property located in a safe deposit box, which included jewelry.

The trial court did not abuse its discretion in denying Wife's motion for temporary child support.

108551 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v THOMAS D. BLACK

Affirmed.

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

KEY WORDS: *Seriousness; remorse; sentence; trial court; factors; sentencing factor; felony sentence; purposes; offender; contrary to law; principles; clear and convincing; appellate court; mitigating; recidivism.*

Defendant's sentence was not contrary to law. There was no objective information in the record to suggest that the court failed to consider R.C. 2929.11 and 2929.12 in formulating the sentence, or relied on demonstrably false or inaccurate information when making these considerations.

108559 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GUY C. KOUAME

Affirmed.

Frank D. Celebrezze, Jr., J., and Michelle J. Sheehan, J., concur; Sean C. Gallagher, P.J., concurs in judgment only with separate opinion.

KEY WORDS: *Domestic violence; endangering children; R.C. 2919.22; recklessness; sufficiency; manifest weight; motion for a mistrial; cumulative error; Crim.R. 52; plain error; harmless error; sentence; R.C. 2929.21; R.C. 2929.22; R.C. 2929.24.*

Appellant's convictions were supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not err or abuse its discretion in admitting claimed irrelevant or

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prejudicial evidence, denying defense counsel's motion for a mistrial, or imposing an 18-month jail term.

108603 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DELONTE FERGUSON

Affirmed.

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

KEY WORDS: *Having weapons while under disability; manifest weight; bench trial; inconsistent verdict; credibility.*

Appellant's conviction for having a weapon while under disability was not against the manifest weight of the evidence. Sitting as the thirteenth juror, we found two important witnesses to be credible when they stated that they saw appellant with a gun.

108883 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AMALGAMATED TRANSIT UNION LOCAL 268 v
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

Affirmed.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Civ.R. 12(B)(1)/motion to dismiss; subject-matter jurisdiction; arbitration agreement; labor dispute; interest arbitration; R.C. Chapter 4117/Public Employees Collective Bargaining Act; R.C. 306.12/employee rights after acquisition; Urban Mass Transportation Act of 1964/section 13(c) Agreement.*

The labor dispute in this case is otherwise governed by R.C. 4117.10 and 306.12, and those statutes apply. The arbitration provision under the section 13(c) Agreement is not controlling here. Because SERB has exclusive jurisdiction over this case, the trial court did not err where it granted appellee's motion to dismiss for lack of subject-matter jurisdiction.

108955 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GREGORY TOLLIVER

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

(Case 108955 continued)

KEY WORDS: Superseding indictment; prosecutorial vindictiveness; due process; sufficiency of the evidence; manifest weight of the evidence; allied offenses.

Defendant was not denied due process, and a reindictment close to the trial date was not the result of prosecutorial vindictiveness where the defendant was informed during plea negotiations that he would be reindicted on more serious charges if he took the matter to trial, and no additional discovery regarding the new charges was necessary after reindictment because the evidence regarding the reindicted charges was contained in the discovery exchanged after the original indictment; defendant's convictions for felonious assault, domestic violence, and kidnapping were supported by sufficient evidence and not against the weight of the evidence; the trial court did not err in not merging the kidnapping convictions with the felonious assault and domestic violence convictions where defendant secreted the victim away from her family for an extended period while he assaulted her and restrained her multiple times from leaving, thereby demonstrating a separate animus for the offenses.