

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 5, 2020

108424 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LAILA AL JAWARY v ASHTEN E. UNDERWOOD, ET AL.

Reversed and remanded.

Anita Laster Mays, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Motion for a new trial, Civ.R. 59(A)(6), manifest weight of the evidence.*

The trial court's summary denial of appellant's motion for a new trial pursuant to Civ.R. 59(A)(6) without a hearing was an abuse of discretion where the jury awarded full medical damages and the record contains sufficient evidence of noneconomic damages to support a finding that the verdict is against the manifest weight of the evidence.

108717 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GERALD A. WIDOK v ESTATE OF MARY WOLF

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, A.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Dismiss; strike; affidavit; deposition; evidence; summary judgment; estate; will; probate; jurisdiction; contract; statute of frauds; consideration; assent; inheritance; promises; oral; undue influence.*

The trial court did not err in dismissing the plaintiff's complaint against the beneficiaries of an estate. However, the trial court erred, in part, in granting summary judgment in favor of the estate where genuine issues of material fact remain regarding the existence and enforceability of an oral contract, the application of the equitable principles of an implied contract for services rendered, and whether the decedent interfered with an expectation of inheritance. In addition, there remain genuine issues of material fact regarding whether the decedent's financial advisor exercised undue influence over the decedent based on his participation in the interference with an expectation of inheritance.

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108917 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KELLY ROAN

Reversed and remanded.

Larry A. Jones, Sr., J., and Anita Laster Mays, J., concur; Patricia Ann Blackmon, P.J., dissents with separate dissenting opinion.

KEY WORDS: *Sufficiency; manifest weight; Crim.R. 29/judgment of acquittal; R.C. 2907.02(A)(1)(c) and 2907.02(A)(2)/rape; Evid.R. 702/expert-witness testimony.*

The victim's testimony was sufficient to support the convictions for rape; however, that testimony evidence is against the manifest weight of the evidence.

The detective's testimony bolstered the victim's credibility and was therefore improperly allowed into the record.

108989 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v ASIA S. BRIGHT

Affirmed in part, reversed in part, and remanded.

PER CURIAM

KEY WORDS: *Contempt of court; civil and criminal contempt; direct and indirect contempt; community control sanctions; inherent authority; R.C. 2705.05(A).*

The court erred as a matter of law when it sentenced the contemnor to community control sanctions for contempt. Although the sanctions identified in R.C. 2705.05(A) do not limit a court's inherent authority to punish contemptuous conduct, this inherent authority does not include the power to impose community control sanctions.

109052 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARDELL BOYD

Affirmed.

Mary J. Boyle, P.J., Michelle J. Sheehan, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *R.C. 2929.11; purposes and principles of felony sentencing; R.C. 2929.12; seriousness and recidivism factors; R.C. 2929.14(C)(4); consecutive sentences; R.C. 2941.25; allied offenses of similar import; R.C. 2903.11(A)(2); felonious assault; R.C.*

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(Case 109052 continued)

2919.25(A); domestic violence; R.C. 2905.02(A)(2); abduction; R.C. 2909.02(A)(2); attempted aggravated arson; R.C. 2903.21(A); aggravated menacing.

Boyd's sentence is not contrary to law. Boyd attempted to kill his wife by stabbing her, catching her on fire, and hitting her with a car. The record clearly and convincingly supports Boyd's individual sentences and the imposition of consecutive sentences. Boyd's offenses are also not allied offenses of similar import.

109119 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v T.S.

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: R.C. 2953.31; expungement; minor misdemeanor; equal protection.

The trial court did not err in determining that defendant is eligible for expungement and granting application where his fourth degree misdemeanor municipal convictions were designated minor misdemeanors under the Revised Code; court correctly concluded that deprivation of remedy of expungement to defendant, compared to other similarly situated offenders, would deprive defendant of equal protection of the law.

109148 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ISRAEL ALVAREZ

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: Crim.R. 11(C)(2)(b); R.C. 2953.08(D)(1); Crim.R. 32(B)(2); R.C. 2943.031(A); effect of guilty plea; appellate rights for jointly recommended sentencing ranges; advisements for non-U.S. citizens.

Alvarez entered his guilty plea knowingly, intelligently, and voluntarily and understood the effect of his guilty plea. The trial court did not violate Crim.R. 11(C)(2)(b) by failing to inform Alvarez that he would not be able to appeal his sentence imposed within an agreed sentencing range. Alvarez was not prejudiced by the trial court's failure to inform him that pleading guilty could subject him to deportation because Alvarez is a United States citizen.

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109191 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FV-I, INC., ET AL. v PRINCESS TOWNSEND-YOUNG, ET AL.

Affirmed.

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

KEY WORDS: *Civ.R. 56(C)/summary judgment; foreclosure action; standing; FDCPA/deceptive practices; creditor; debt collector; prima facie showing; class claims; fraud; qualified immunity; civil conspiracy.*

Appellants are not parties to, nor are they third-party beneficiaries of the assignment of mortgage. Appellants, therefore, lack standing to challenge the assignment of mortgage, and the trial court did not err in determining that appellants lack standing.

Appellants failed to establish a prima facie case. Under the FDCPA, appellees are not considered debt collectors. Appellants' argument of performance of deceptive practices by appellees fails.

Appellants failed to produce evidence that appellees made material representations to appellants that appellants relied upon to their detriment. Appellants failed to overcome the doctrine of qualified immunity, and appellants' argument for fraud fails. Additionally, where appellants' prior claims failed, so too does appellants' claim of conspiracy. There exists no underlying unlawful act. It was proper where the trial court granted appellees' motion for summary judgment on appellants' fraud and conspiracy claims.

Appellants' individual claims were dismissed. Appellants, therefore, lack standing to bring claims on the behalf of others. The trial court did not err in dismissing appellants' class claims.

109234 SOUTH EUCLID MUNI. C CRIMINAL MUNI. & CITY
CITY OF SOUTH EUCLID v REGINA SILVER

Affirmed.

Larry A. Jones, Sr., J., Frank D. Celebrezze, Jr., P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Automobile accident; South Euclid Codified Ordinances 331.22 and 335.12; suggestive identification; motion to suppress.*

Appellant failed to file the transcript from the trial court's hearing on appellant's motion to suppress argument of suggestive identification. This court, therefore, is not able to review appellant's argument on appeal.

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109292 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE A.S.

Reversed and remanded.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Dismissal; temporary custody; dispositional; motion; R.C. 2151.415(B); R.C. 2151.415(D)(2); R.C. 2151.353(G); sunset date; continuing jurisdiction; hearing; best interest; order; disposition.*

The juvenile court erred in dismissing the case simply because the temporary custody order was about to expire and no dispositional motion had been filed by the children services agency. The juvenile court had continuing jurisdiction over the child and, pursuant to R.C. 2151.415(D)(2) and 2151.415(B), was required to conduct a hearing and issue an appropriate order of disposition in accordance with the best interest of the child. The decision of the juvenile court was reversed, and the case was remanded.

109352 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
STATE OF OHIO v MICHAEL GOODWIN

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Sentence; void; R.C. 2929.23; new argument; postconviction petition.*

The appellate court did not consider defendant's argument that the trial court erred in denying his motion to vacate a void sentence because the journal entry of sentencing did not sentence defendant to 30 "full" years in prison where defendant did not raise that issue in his motion and could not raise it for the first time on appeal; even if the appellate court were to consider the issue, it had no merit because defendant's motion was required to be considered as a successive postconviction petition and did not comply with the requirements of R.C. 2953.23 for a successive petition.

109446 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE C.H.

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

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KEY WORDS: *Confinement credit; juvenile; R.C. 2152.18; confinement; secure facility.*

The trial court erred by denying appellant credit for his time at Carrington Youth Academy. Appellant was “confined” for purposes of R.C. 2152.18(B) during his time at Carrington Youth Academy, and he is entitled to confinement credit for the days spent there. This matter is remanded with instructions to the juvenile court to recalculate appellant’s confinement credit allowing him to receive credit for his time at Carrington Youth Academy.

109656 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DORIAN L. HILL

Affirmed.

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

KEY WORDS: *Res judicata; nunc pro tunc; Crim.R. 32(C).*

Where a defendant fails to directly challenge a clerical error in a journal entry, a subsequent attempt to do so is barred by the doctrine of res judicata. Where the record undisputedly establishes that a defendant was found guilty by a jury, but the sentencing entry fails to indicate that fact in violation of Crim.R. 32(C), the trial court may correct this omission via nunc pro tunc entry so that the record accurately reflects what occurred. A defendant’s physical presence is not a requirement for the court to correct its journal in this manner.

109668 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE A.T., A MINOR CHILD

Reversed and remanded.

Frank D. Celebrezze, Jr., P.J., Larry A. Jones, Sr., J., and Raymond C. Headen, J., concur.

KEY WORDS: *Confinement credit; juvenile; R.C. 2152.18; hearing; due process; term of commitment.*

The trial court erred by failing to hold a hearing to determine whether he was entitled to confinement credit for the time he spent at Cleveland Christian Home. Further, because the sentence imposed at the dispositional hearing was unclear, there is a variance between the term of commitment pronounced in open court and the term imposed by the court’s judgment entry. The matter is remanded for a new dispositional hearing and a hearing on whether appellant was entitled to confinement credit for the time spent at Cleveland Christian Home.

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109851 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT W. KOENIG

Reversed and remanded.

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

KEY WORDS: Conceded error; jail-time credit; concurrent sentences.

Trial court erred in failing to apply jail-time credit to both of defendant's sentences where defendant was sentenced to concurrent terms of imprisonment. State conceded the error.