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Court of Appeals, Eighth Appellate District

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October 1, 2020

107971 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KURTIS FIELDS

Affirmed.

Patricia Ann Blackmon, P.J., Raymond C Headen, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Murder; manifest weight of the evidence; identification of defendant; felony sentencing; repeat violent offender specification.*

Defendant's murder conviction is supported by the manifest weight of the evidence in the record. The murder was recorded by video surveillance cameras, and two witnesses identified defendant as the shooter. The court did not err by sentencing defendant to ten years in prison for the repeat violent offender specification.

108771 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SAMSON HUGHLEY

Affirmed.

Frank D. Celebrezze, Jr., J., and Anita Laster Mays, P.J., concur; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *R.C. 2152.12; amenability; Juv.R. 30; abuse of discretion; sufficiency of evidence; prior calculation and design; manifest weight of the evidence; merger; allied offenses of similar import.*

The juvenile court properly considered the factors under R.C. 2152.12(D) and (E) in determining that appellant was not amenable to rehabilitation in the juvenile justice system. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court correctly refused to merge appellant's convictions for aggravated murder and aggravated robbery because they were not allied offenses of similar import, and the court was permitted to impose multiple firearm specifications for a single incident.

108855 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BANK OF NEW YORK MELLON v JOHNSON L. FISHER, ET AL.

Affirmed.

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

KEY WORDS: *Foreclosure; motion for summary judgment; in blank indorsement; allonge; multiple versions of the note; supplemental affidavit attached to reply brief; loan modification agreement; possession of the original note; enforceability of the note; Evid.R. 901; authentication; Evid.R. 1003; personal knowledge; payment history; conditions precedent; notice of default; Fair Debt Collection Practices Act; and invasion of privacy.*

The trial court's decision to grant plaintiff-appellee's motion for summary judgment was appropriate where the record demonstrated no genuine issues of material fact existed for trial. A supplemental affidavit attached to the plaintiff-appellee's reply brief that clarified previously raised issues was correctly considered by the trial court. The execution of a loan modification agreement did not transfer the note holder's interest to the loan servicer. Enforceability of the note was demonstrated by the plaintiff-appellee's possession of the instrument, with an in blank indorsement, at the time the foreclosure complaint was filed. The existence of an undated allonge and an in blank indorsement, both assigning the note to the plaintiff-appellee, did not refute the plaintiff-appellee's status as holder of the note or create a genuine issue of material fact. The affidavits provided by the loan servicer's employee authenticated the documents affixed to the foreclosure complaint. The plaintiff-appellee's notice of default letter clearly explained the defendants-appellants' rights of reinstatement and referenced the rights of reinstatement detailed in their mortgage so as to satisfy the conditions precedent mandated before filing the foreclosure action. The defendants-appellants' counterclaims that presented a violation of the Fair Debt Collection Practices Act and an invasion of privacy were correctly dismissed pursuant to summary judgment.

108959	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v BRUCE COBBLEDICK			

Affirmed.

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

KEY WORDS: *Guilty plea; Crim.R. 11; colloquy; substantial compliance; strict compliance; consecutive sentences; R.C. 2929.14(C)(4); R.C. 2953.08.*

The defendant's plea was knowingly, voluntarily, and intelligently entered in light of the thorough plea colloquy, and an appellate court cannot review the imposition of consecutive sentences under what is essentially a de novo review standard.

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108991 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JOHN GRECO v CLEVELAND BROWNS FOOTBALL CO., LLC

Affirmed.

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

KEY WORDS: *Summary judgment; employee; independent contractor; R.C. 4123.84(A)(3)(a).*

The trial court did not err in denying the defendant-appellant's motion for summary judgment and in granting the plaintiff-appellees' motion for summary judgment because the team physicians are considered in the employ of the employer instead of independent contractors as defined by R.C. 4123.84(A)(3)(a).

109055 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARL REESE

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Violation of community control; hearsay.*

Although the rules of evidence are inapplicable to revocation hearings, the admission of hearsay may implicate a defendant's right to confront and cross-examine witnesses. In this case, however, the alleged hearsay evidence is not the only evidence supporting defendant's failure to complete the ordered inpatient treatment. Consequently, the trial court did not err in denying defendant a right to confrontation and his trial counsel did not provide ineffective assistance in failing to object to the purported hearsay statement.

109077 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ERNEST E. PHILLIPS

Affirmed.

Anita Laster Mays, P.J., Frank D. Celebrezze, Jr., J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Jury instruction; voluntary manslaughter; abuse of discretion.*

The trial court did not abuse its discretion when it denied the appellant's request to instruct the jury on the inferior offense of

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voluntary manslaughter, because the facts of the case do not support such an instruction.

109095 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE C.B.

Affirmed.

Anita Laster Mays, P.J., Frank D. Celebrezze, Jr., J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: R.C. 2907.02(A)(2), rape, R.C. 2905.02(A)(2), consent, abduction, delinquent and unruly, manifest weight of the evidence.

The trial court's adjudication of appellant as delinquent and unruly is not against the manifest weight of the evidence. Appellant and the victim engaged in a sporadic relationship. The victim testified that the sexual encounter in issue was not consensual. The evidence supported the delinquency adjudication.

109117 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
JERRY FREBES v AMERICAN FAMILY INSURANCE COMPANY, ET AL.

Affirmed.

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

KEY WORDS: Summary judgment; breach of contract; Civ.R. 56(F).

Trial court properly granted summary judgment in favor of defendant on plaintiff's breach of contract claim where there was no evidence that the defendant breached a contract with plaintiff.

Trial court acted within its discretion in denying plaintiff's second request for additional time to respond defendant's motion for summary judgment where the court had previously granted a two-month extension of the response time.

Trial court did deprive plaintiff of the opportunity to file a motion for summary judgment where plaintiff failed to file a motion for summary judgment by the dispositive motion deadline.

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109136 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CLEVELAND FIRE FIGHTERS, LOCAL 93 I.A.F.F. v CITY OF CLEVELAND, OHIO

Affirmed.

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

KEY WORDS: *Civ.R. 56/summary judgment; civil service examinations; eligibility; back pay, seniority; attorney fees; use of competitive exam; writ of mandamus.*

The trial court's writ order requiring the city to administer competitive examinations was clear and unambiguous and not in need of clarification. The trial court did not err in denying the relator-appellant's request for back pay and other benefits. The trial court did not abuse its discretion by denying the relator-appellant's request for attorney fees because there was no bad faith on the part of the appellee.

109166 ROCKY RIVER MUNI. G CIVIL MUNI. & CITY
STACY ALCOROSO v JASON B. CORRELL

Affirmed in part; reversed in part; and remanded.

Frank D. Celebrezze, Jr., J.; Sean C. Gallagher, P.J., concurs with separate concurring opinion; Raymond C. Headen, J., concurs with lead opinion and concurs with separate concurring opinion.

KEY WORDS: *R.C. 5321.16; wrongful withholding of security deposit; damages; attorney fees; Civ.R. 54; costs; manifest weight of the evidence.*

The jury's verdict was against the manifest weight of the evidence insofar as the jury failed to award statutory double damages and reasonable attorney fees in this matter. In addition, the trial court erred in denying appellant's motion for attorney fees. The trial court did not err in denying appellant's motion to tax costs.

109193 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL O'TOOLE v ROSEMARY O. HAMMAN, ET AL.

Affirmed.

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

KEY WORDS: *Frivolous conduct; sanctions; attorney fees; Civ.R. 11; R.C. 2323.51.*

The trial court did not abuse its discretion in awarding sanctions

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against the appellant because the appellant's claims were unsupported by any evidence, unwarranted under existing law, and made to harass the appellees. The appellees presented evidence that the attorney fees they incurred were reasonable. The trial court did not deprive the appellant an opportunity to present a defense at the sanctions hearing.

109560 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TROY WINTERS

Affirmed.

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

KEY WORDS: Final, appealable order; collective imposition of postrelease control; res judicata.

Trial court did not err in denying defendant's motion for a final, appealable order. Trial court was not required to impose separate terms of postrelease control for each individual offense in its sentencing journal entry. Even if the trial court had erred in imposing postrelease control, claim would be barred by res judicata because defendant did not raise the issue in his direct appeal. Trial court's sentencing journal entry imposing a collective period of postrelease control was a final, appealable order.

109611 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ARTHUR MCDANIEL

Affirmed.

Sean C. Gallagher, J., and Mary J. Boyle, P.J., concur; Patricia Ann Blackmon, J., concurs in judgment only.

KEY WORDS: Postconviction relief; operative facts; R.C. 2953.21; res judicata.

The petition for postconviction relief in this case was devoid of any documentary evidence that could be considered to substantiate the allegations that trial counsel rendered ineffective assistance by failing to call several witnesses at the trial, and therefore, the trial court did not err in denying the petition without a hearing.

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109647 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE B.M.

Affirmed.

Michelle J. Sheehan, J., Frank D. Celebrezze, Jr., P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.413; reasonable efforts to return child; R.C. 2151.419; R.C. 2151.414; credible evidence; best interest of the child.*

The trial court's decision granting permanent custody of the child to the agency is affirmed. The 2151.419 mandate of reasonable efforts to return the child to the home does not apply to the motion for permanent custody made pursuant to R.C. 2151.413. The record demonstrated that the agency made reasonable efforts to reunify Mother and child. The record demonstrated that Mother failed to remedy the conditions that initially caused the child to be placed outside the home: substance abuse issues and housing. The record also reflected that Mother's other children had been removed from Mother's care and custody and placed into the permanent custody of the agency. Additionally, competent, credible evidence supported the juvenile court's grant of permanent custody to the agency and the decision was not against the manifest weight of the evidence.