

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 22, 2021

109218 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CUYAHOGA COUNTY CASE MANAGEMENT, ET AL. v
CLARK INDUSTRIAL INSULATION COMPANY

Reversed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Asbestos; voluntarily dissolved corporation; wind-up; extend; statutory time; R.C. 1701.88; R.C. 1701.89; jurisdiction; receiver.*

The specialized asbestos trial court lacked authority to extend the statutory time to wind-up the affairs of a voluntarily dissolved corporation because the court was not located in the county where the dissolved corporation's principal office is located, and the court's jurisdiction was not invoked upon a complaint as required by R.C. 1701.89. Even if the jurisdictional requirements were satisfied, the trial court misapplied R.C. 1701.88 because the extension of the five-year period only applies to winding-up of corporate affairs, not extending the time to bring actions against the dissolved corporation. The trial court erred in appointing a receiver for the dissolved corporation because the movants failed to establish that the appointment was necessary.

109339 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v PATRICIA L. MARRIOTT

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Ineffective assistance of counsel; no contest plea; guilty plea; preserve; appellate review; motion in limine.*

A trial court's decision on a motion in limine is not preserved for appellate review until the proponent of the evidence attempts to proffer it at trial. Accordingly, the type of plea entered by an appellant has no bearing on that analysis because by entering a plea, they did not go to trial.

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109431 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MONOLITO J. MERRIMAN

Vacated.

Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur; Lisa B. Forbes, J., dissents with separate opinion.

KEY WORDS: *Sufficient evidence; retaliation.*

The evidence is not sufficient to convict the appellant of retaliation, because his statements were made during a bipolar episode. Additionally, the state did not demonstrate that the appellant purposely made threats to the judge or the police officers.

109440 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ERIKA MOLNAR, ET AL. v MARGARET W. WONG & ASSOCIATES CO., L.P.A., ET AL.

Affirmed.

Eileen T. Gallagher, J., and Kathleen Ann Keough, P.J., concur; Lisa B. Forbes, J., concurs with separate attached opinion.

KEY WORDS: *U nonimmigrant visa; U visa; privilege; 8 U.S.C. 1367(a)(2); 8 C.F.R. 214.14; subpoena duces tecum; nonparty; standing; in terrorem effect; aliens.*

Trial court's denial of a motion to quash a subpoena is affirmed where the plaintiffs' interest in keeping the privileged information was outweighed by the defendants' interest in obtaining the information and any chilling effect caused by the disclosure of privileged information was minimal since the plaintiffs had obtained permanent resident status and the trial court's order limited the attorney's use of the information.

109466 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM S. ZSIGRAY

Vacated in part; remanded.

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

KEY WORDS: *Drug possession; R.C. 2929.18(B)(1); mandatory fine; affidavit; unable to pay; abuse of discretion; ineffective assistance; R.C. 2947.23(A)(1)(a)(i).*

Reversed and vacated trial court's imposition of a mandatory fine

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(Case 109466 continued)

under R.C. 2929.18(B)(1). The trial court abused its discretion by imposing the mandatory fine when a poverty affidavit was filed and the defendant demonstrated he was indigent and unable to pay the mandatory fine. Appellant's trial counsel did not render ineffective assistance of counsel where he timely filed a poverty affidavit and the trial court was advised of its filing and had reviewed the PSI report.

109475 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROBERT JACOVETTY v BROWNING FERRIS INDUSTRIES OF OHIO, ET AL.

Reversed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Workers' compensation; right to participate; motion for new trial; untimely objection to verdict; motion for new trial.

Reversed trial court's granting of new trial where defendant objected to allegedly inconsistent verdicts after the jury was discharged, where the only question for review was whether the plaintiff was entitled to workers' compensation benefits and the jury clearly found he was so entitled.

109544 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JASON WOLFKILL

Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

KEY WORDS: Sentence; R.C. 2929.11 and 2929.12; maximum sentence.

Appellant's maximum sentence of 36 months for his third-degree burglary offense is affirmed because the sentence is within the statutory range and the record reflects the trial court considered the purposes and principles of felony sentencing in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.

109619 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN EVANS

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Affirmed.

Frank D. Celebrezze, Jr., P.J., Michelle J. Sheehan, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Felony sentence; maximum sentence; R.C. 2953.08; R.C. 2929.11; R.C. 2929.12; R.C. 2929.14; contrary to law; invited error.*

Appellant's sentence is not contrary to law.

109767 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
5500 SOUTH MARGINAL WAY LLC, ET AL. v ERICK A PARKER, ET AL.

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Default judgment; Civ.R. 55; abuse of discretion; Civ.R. 8; damages.*

The trial court erred in entering default judgment and awarding zero damages on all of appellants' claims, yet only appearing to assess appellants' evidence of damages with regard to appellants' breach of contract claims.

109772 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
THEODORE R. JACKSON, JR. v THE STATE OF OHIO, ET AL.

Affirmed.

Mary Eileen Kilbane, J., Mary J. Boyle, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Wrongful imprisonment; R.C. 2743.48; statute of limitations; R.C. 2305.07; summary judgment; Civ.R. 56; findings of fact.*

Plaintiff-appellant's wrongful imprisonment action was time-barred where he filed it more than six years after his cause of action accrued. The fact that the statute of limitations for plaintiff-appellant's original offense had not expired did not bar him from filing a wrongful imprisonment action or otherwise operate to toll the six-year statute of limitations in R.C. 2305.07. The trial court properly granted summary judgment in favor of defendants, and the court was not required to issue findings of fact and conclusions of law.

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109810 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE ESTATE OF VLADA SOFIJA

Dismissed.

Emanuella D. Groves, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Final appealable order; R.C. 2109.33; probate court; estate; denial of exception to final accounting; standing; pecuniary interest.*

An order denying an exception to an account or inventory does not affect a substantial right and is therefore not a final appealable order. Article IV, Section 3(B)(2) of the Ohio Constitution grants jurisdiction to courts of appeals “to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.” Consequently, because this court does not have jurisdiction over nonfinal orders, we dismiss the appeal.

Further, if the present appeal was a final appealable order, Brady would not prevail, if reviewed. Two of the three assignments of error that Brady raised in her last appeal are identical to the two assignment of errors she now raises in this appeal. In Brady’s last appeal, pursuant to R.C. 2109.33, we found that she lacked standing because there was no showing that she had any direct pecuniary interest in the estate, was not a beneficiary of the estate, and was not a creditor of the estate. As such, the probate court properly denied her exception to the final accounting.

109911 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRANCE REESE

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Technical violation; community control; violation; contact; probation officer; R.C. 2929.15; sentencing cap.*

Failing to contact probation officer over the course of five weeks is not a technical violation of community control and, therefore, not subject to R.C. 2929.15’s sentencing cap.

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110067 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE I.N., ET AL.

Affirmed.

Eileen T. Gallagher, J., Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Permanent custody; continuance; due process; quarantine; Covid-19.*

Trial court did not abuse its discretion in denying mother's request for continuance of permanent custody trial on the day of trial where mother failed to communicate and cooperate with her lawyer and with the court and failed to demonstrate good cause.