

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 29, 2021

109254 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL J. STOUDEMIRE

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Res judicata, void versus voidable sentence.*

109270 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT FITZ

Affirmed.

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

KEY WORDS: *Plain error; burden; demonstrate.*

To establish plain error, a defendant must show that an error occurred, that it was plain and that it affected his substantial rights. The defendant bears the burden of demonstrating plain error on the record. A defendant does not meet his burden to demonstrate plain error where he fails to timely claim that plain error occurred or identify any plain error on the record.

109424 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MIKIAL K. NEW BEY

Affirmed.

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

KEY WORDS: *R.C. 2923.03(D), codefendant testimony, ineffective assistance of counsel, Evid.R. 807, statements of minor children, impermissible comments during opening statements, manifest weight of the evidence.*

Appellant's convictions are not against the manifest weight of the evidence. A thorough review of the record does not indicate that the jury clearly lost its way.

Reviewed for plain error, the record does not support that defense counsel's performance deprived appellant of a fair trial and that, but for, the alleged deficiencies, the outcome of the trial would have been different.

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(Case 109424 continued)

Evid.R. 807(C) regarding out-of-court statements by children was not violated in this case. Relevant objections were sustained. Plain error analysis of the remaining statements does not support that but for the admission of the testimony, the outcome of the proceedings would have been different.

The state's comments during opening arguments summarized the state's theory of the case and admissible evidence during trial supported the cited statements.

109433 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DREW ELLIS DANZY

Affirmed.

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

KEY WORDS: Motion to dismiss; preindictment delay; Evid.R. 404(A)(1)/cross-examination of previous conviction; R.C. 2945.71(C)(2)/speedy trial; R.C. 2945.72/tolling; sufficiency; manifest weight.

Appellant failed in appellant's burden to show that he suffered actual prejudice due to a preindictment delay. Appellee's delay to indict was for investigative purposes, and additionally, appellant was unable to establish what unavailable witnesses might have testified to that would have bolstered appellant's case. There was no error where the trial court denied appellant's motion to dismiss for preindictment delay.

On direct, appellant gave testimony that he was nonviolent thereby opening the door for appellee to cross-examine appellant on his previous violent offense. The trial court did not err by allowing the cross-examination to go forth.

Where the delays for speedy trial purposes were at appellant's request, there was no violation of appellant's speedy-trial rights.

Witness testimony and scientific evidence was sufficient to sustain appellant's conviction; the jury was in the best position to determine credibility. Appellant's conviction was not against the manifest weight of the evidence.

109452 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARKUS HAWKINS

Affirmed.

Sean C. Gallagher, P.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Aggravated murder; aggravated burglary; prosecutorial misconduct; mistrial; substantial rights; fair trial; sufficiency; manifest weight; identification; physical evidence; credibility; discrepancies; eyewitness; DNA evidence.*

Appellant’s convictions for aggravated murder and aggravated burglary were affirmed. The trial court did not abuse its discretion in denying the motion for a mistrial claiming prosecutorial misconduct during closing argument when the state is permitted to comment upon a defendant’s failure to offer evidence in support of its case, the prosecutor is permitted to respond to defense counsel’s attacks on a witness’s credibility, isolated comments are not to be viewed in isolation, and in the context of the entire trial, the comments did not prejudicially affect appellant’s substantial rights or deprive him of a fair trial. There was credible, eyewitness testimony identifying appellant as the offender, and circumstantial evidence was introduced that implicated appellant in the crimes. The lack of physical evidence linking appellant to the scene of the crime and inconsistencies in witnesses’ testimony did not render the convictions against the manifest weight of the evidence, and there was sufficient evidence to support the convictions.

109557	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DENAYNE DAVIDSON-DIXON			

Reversed and remanded.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Self-defense; jury instruction; sufficient; tends to show; creating the situation; marital; punch.*

Trial court should have given the jury an instruction on nondeadly self-defense where the evidence when viewed in favor of the defendant tended to show that he was not at fault for creating the situation giving rise to the altercation that occurred in the marital bedroom, the defendant has a reasonable and honest belief he was in imminent danger of bodily harm; and that a single punch was reasonable force to defend against that danger of bodily harm.

109648	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v MERWAN MARK JABER			

Vacated and remanded.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Contrary to law; sentence; maximum fine; housing violation; conceded error.*

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(Case 109648 continued)

The city concedes error in the trial court's imposition of a fine for \$13,000 for a minor misdemeanor housing violation. Statutorily, the maximum fine for a minor misdemeanor is \$1,000. Because the fine exceeded the statutory maximum, the trial court's sentence is contrary to law and appellant's assignments of error are sustained.

109705 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
UNIFUND CCR, LLC v ROBERT BIRCH

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Summary judgment; credit card; account; assignment; discovery; Civ.R. 56(F); continuance.

Affirmed the trial court's decision granting summary judgment in favor of plaintiff-appellee in an action to recover an outstanding balance due on a credit card account. Because defendant-appellant did not request a Civ.R. 56(F) continuance to conduct further discovery and additional discovery was unnecessary to resolve the pertinent issues raised in the motion for summary judgment, the trial court did not abuse its discretion by ruling on the motion. Plaintiff-appellee presented sufficient evidence in support of its motion, including evidence of the outstanding balance owed and a valid assignment of the account.

109726 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MWESI ATAHUYA

Affirmed.

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

KEY WORDS: Postconviction relief; petition; motion to withdraw; plea; untimely; postsentence; ineffective assistance of counsel; void; voidable; coercion; jurisdiction; hearing.

The trial court did not abuse its discretion by denying the defendant's untimely petition for postconviction relief without a hearing. The trial court did not abuse its discretion by denying the defendant's postsentence motion to withdraw his guilty pleas without an evidentiary hearing.

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109744 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v MAURICE FREEMAN

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 2953.21; R.C. 2953.23; postconviction relief; timeliness.*

A trial court does not abuse its discretion denying an untimely petition for postconviction relief where the petitioner fails to satisfy the statutory criteria that gives the trial court jurisdiction to entertain the petition.

109853 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DEASHAWN J. BLACK

Affirmed.

Mary Eileen Kilbane, J., and Frank D. Celebrezze, Jr., P.J., concur; Kathleen Ann Keough, J., concurs in judgment only.

KEY WORDS: *Timely appeal; App.R. 3; App.R. 4; no jurisdiction of untimely appeal; judgment of conviction.*

The court does not have jurisdiction to hear an untimely appeal when defendant failed to timely appeal his judgment of conviction, which occurred in 2015. As such he cannot timely appeal a different judgment entry to appeal his judgment of conviction five years later.

109988 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
V.C. v O.C.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Termination of shared parenting plan; interim, temporary orders; adoption of proposed findings of fact and conclusions of law; failure to file transcript; App.R. 9; presumption of regularity; R.C. 3109.04; allocation of parental rights and responsibilities; best interest of the child; child support; R.C. 3119.02; R.C. 3119.021; R.C. 3119.04; needs and the standard of living of the children and the parents; Civ.R. 54(D); court costs.*

CASE DECISION LIST

(Case 109988 continued)

Appellate court lacked jurisdiction to review interim, temporary child custody and child support orders. Because trial court's temporary orders merged into the final judgment, any possible error contained in the temporary orders was moot.

Fact that trial court adopted mother's proposed findings of fact and conclusions of law was not, in and of itself, error where there was nothing in the record to suggest that trial court failed to consider the evidence presented and reach its own independent determinations. Without a transcript of the proceedings, appellate court must presume regularity and had no basis upon which to review father's assignments of error to the extent they concerned factual disputes.

Trial court did not abuse its discretion in terminating shared parenting plan and designating mother residential parent and legal custodian of the parties' minor children. The findings of fact set forth in the judgment entry supported trial court's decision that it was in the children's best interest to terminate the shared parenting plan and designate mother residential parent and legal custodian.

Where combined annual income of both parents was greater than the maximum annual income listed on the basic child support schedule, trial court abused its discretion in failing to consider the needs and the standard of living of the children and the parents when determining the amount of father's child support obligation. Trial court did not abuse its discretion in ordering father to pay court costs.

109994	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
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IN RE Z.M.

Reversed and remanded.

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

KEY WORDS: R.C. 2152.84/required hearing for reclassification of juvenile sexual offender registrant; R.C. 2152.85/procedure to request reclassification or declassification of juvenile offender registrant's tier status.

There was error by the trial court where it ruled on appellant's petition for declassification. The mandatory completion-of-disposition hearing was not held. Appellant's petition for declassification was premature, and the trial court lacked jurisdiction to rule on the petition.

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110129 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ELOISE L. HANCE, ET AL. v CLEVELAND CLINIC

Affirmed.

Mary J. Boyle, A.J., Sean C. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Peer-review privilege; R.C. 2305.252; peer-review committee; R.C. 2305.25(E); trade secrets, R.C. 1333.61(D).*

The trial court did not err in ordering the Cleveland Clinic Foundation to produce documents in response to the plaintiffs' document requests. The Clinic failed to meet its burden to establish that the peer-review privilege shielded the documents from discovery or that the documents contained trade secrets.

110146 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE Z.R.

Affirmed.

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

KEY WORDS: *R.C. 2151.414/permanent custody; reunification; best interest of the child; manifest weight.*

A reunification case plan was developed for mother; mother repeatedly failed to meet the goals of the case plan and the trial court, during the permanent-custody trial, recited those failures in the trial court's findings.

The trial court did not abuse its discretion where it granted permanent custody to the agency. Competent, credible evidence supported the trial court's best-interest determination, and the trial court's final judgment was not against the manifest weight of the evidence.

110171 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE E.L.

Affirmed.

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

KEY WORDS: *Permanent custody; substance abuse; drug test; confrontation; authenticity; plain error; object; best interest; remedy; reasonable time; case plan; abuse of discretion; termination; parental rights; clear and convincing evidence.*

(Case 110171 continued)

The mother did not demonstrate the juvenile court committed plain error by permitting the agency's social worker to testify about the testing results of mother's drug screens. The juvenile court did not err by awarding permanent custody of the mother's child to Cuyahoga County Division of Children and Family Services because the juvenile court properly engaged in the two-prong analysis prescribed by R.C. 2151.414 and clear and convincing evidence supported the court's decision granting permanent custody of the child to the agency.