

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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December 2, 2021

110236 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RM RIGGLE ENTERPRISES, INC. v COMMERCE PARK PLACE HOLDINGS, LLC, ET AL.

Affirmed.

Michelle J. Sheehan, J., Frank D. Celebrezze, Jr., P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Construction contract; subcontractor; arbitration; motion to stay proceedings pending arbitration; motion to stay arbitration; joinder.*

The trial court properly stayed proceedings pending arbitration pursuant to the arbitration agreement between a property owner and a general contractor. Where the general contractor and the subcontractor had also entered into an arbitration agreement, the question regarding whether the general contractor could join the subcontractor in the arbitration between the property owner and the general contractor is a procedural matter left to the arbitrator.

110267 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JACQUELINE PERKO v HEALTHCARE SERVICES GROUP, INC., ET AL.

Affirmed.

Sean C. Gallagher, P.J.; Emanuella D. Groves, J., concurs; Lisa B. Forbes, J., concurs in judgment only with separate opinion.

KEY WORDS: *Landlord; tenant; nondelegable duty; R.C. Chapter 5321; inherently dangerous; assisted living facility; R.C. Chapter 3721.*

The trial court did not err in granting summary judgment because the defendants delegated their duty to wax a floor to an independent contractor and none of the exceptions under the nondelegable duty doctrine imputed liability to the independent contractor's employer.

110315 COURT OF CLAIMS I COURT OF CLAIMS
ANTHONY VIOLA v CUYAHOGA COUNTY PROSECUTOR'S OFFICE

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Court of Claims; R.C. 149.43; Ohio Public Records*

(Case 110315 continued)

Act; R.C. 2743.75; public record; complaint alleging denial of access to public records; public employee's private email account; and clear and convincing evidence.

Ohio's Public Records Act, codified in R.C. 149.43, provides that upon request a public office shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. Ohio courts construe the public records act liberally in favor of broad access, with any doubt resolved in favor of disclosure of public records.

R.C. 2743.75 provides an expeditious and economical procedure that attempts to resolve disputes alleging a denial of access to public records. A requester must establish entitlement to relief in an action filed in the Court of Claims under R.C. 2743.75 by clear and convincing evidence. In the specific context of public-records-access appeals filed pursuant to R.C. 2743.75(G)(1), Ohio's courts of appeals have applied the standard of appellate review applicable to such mixed questions of law and fact, reviewing the application of a claimed exemption de novo while according due deference to the trial court's factual determinations.

Appellant argues that the Court of Claims erred when it dismissed his complaint and specifically contends that the Court of Claims should have ordered the prosecutor's office to conduct an in camera search of a former assistant prosecutor's private email account to uncover email communications appellant believes exists between the former employee and a government witness.

However, although an email message in a public office account readily satisfies the first two prongs of the definition of "record" in R.C. 149.011(G), as a "document, device, or item," that is "created or received by or coming under the jurisdiction" of the office, the emails appellant sought did not meet the third prong of the definition. The sought-after email would have satisfied the definition of a record if the served to "document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office."

The prosecutor's office produced 572 pages of email communications, from its email server, responsive to appellant's Request No. 3 and advised appellant that it had no records that were responsive to Request Nos. 1 and 2. In the motion to dismiss, the prosecutor's office attached the affidavit of its former employee, who averred that he had not conducted any business of the prosecutor's office with the email address provided by his then employer and that he had no emails related to his duties as an assistant prosecutor on his personal Yahoo email account. The former employee specifically averred that he searched his private email account, using the criteria appellant provided, but uncovered no emails that relate to any case or matter involving the prosecutor's office or to his employment or duties with that office. A public office has no duty to provide records that do not exist, or that it does not possess. In the absence of evidence to the

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(Case 110315 continued)

contrary, the prosecutor's office may be presumed to have performed its duties including public records identification and retrieval regularly and in a lawful manner. After our review, we conclude that appellant failed to meet his burden under R.C. 2743.75 by clear and convincing evidence that sought-after records exist on the former employee's private email account. As such, the Court of Claims did not err when it dismissed appellant's complaint.

110341 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
THE NAIL NOOK INC. v HISCOX INSURANCE COMPANY INC., ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Motion for judgment on the pleadings; insurance policy; nail salon; coronavirus-related business interruption losses; executive order closing certain businesses due to state of emergency; insurance policy's virus or bacteria exclusion.

The trial court did not err in granting insurance company's motion for judgment on the pleadings because the insurance policy's virus or bacteria exclusion precluded coverage for coronavirus-related losses.

110465 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MELVIN I. GUINN, SR. v CUYAHOGA METROPOLITAN HOUSING AUTHORITY

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: State Employment Relations Bureau; R.C. 4117.09; collective bargaining agreement; discrimination; statute of limitations; exclusive jurisdiction.

The trial court did not err in dismissing all claims based on the appellant's concession that the claims advanced in the complaint that survived the statute of limitations were under the exclusive jurisdiction of State Employment Relations Bureau.

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110576 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TREMAIN E. MARTIN

Affirmed.

Lisa B. Forbes, J., Mary J. Boyle, A.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Court costs, res judicata, successive similar motions, R.C. 2947.23.*

Under R.C. 2947.23, trial courts retain jurisdiction to review or modify orders requiring offenders to pay court costs. However, appellant's argument that he should be relieved from the trial court's order requiring him to pay court costs is barred by res judicata. Appellant moved the trial court in 2018 to vacate court costs. Subsequently, appellant filed another motion in 2020 seeking to vacate court costs, asserting for the first time that the court's order went dormant in 2016, which was denied. Because appellant could have raised the dormancy argument in his 2018 motion, he is barred by res judicata from raising it in a successive similar motion in 2020.

110608 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.N.

Affirmed.

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

KEY WORDS: *Permanent custody; competent and credible evidence; R.C. 2151.414; best interest.*

Competent and credible evidence supported the juvenile court's decision that, pursuant to R.C. 2151.414, an award of permanent custody to the agency was in the teenage child's best interest and that the child should not or could not be placed with parent within a reasonable time.