

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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December 30, 2021

109847 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LAWRENCE WALLACE, JR.

Affirmed.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Juror misconduct; mistrial; cumulative error doctrine; harmless error.*

Trial court does not err in denying mistrial due to a juror expressing an opinion on the final question when the offending juror is removed and, after questioning the entire panel, it is determined that the remaining jurors are capable of proceeding without allowing the juror misconduct to affect their deliberations. The cumulative error doctrine applies to errors of the trial court. A party is charged with requesting a curative instruction when necessary. Failure to do so waives any error. Furthermore, where the complained of issues are a combination of minor issues that do not rise to the level of error and errors of admission that are cumulative, the admitted evidence is harmless.

110145 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.B., ET AL.

Affirmed.

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

KEY WORDS: *Legal custody; best interest of the child; weight of the evidence; preponderance of the evidence.*

Juvenile court did not abuse its discretion in placing children in legal custody of Father where Father completed all case plan goals, had maintained custody of children for over a year with no issues, and Mother had failed to complete her case plan and impeded CCDCFS's ability to review her progress.

110151 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CINCINNATI INSURANCE COMPANY v DISCOUNT DRUG MART, INC.

Affirmed.

Mary J. Boyle, A.J., Anita Laster Mays, J., and Lisa B. Forbes, J., concur.

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(Case 110151 continued)

KEY WORDS: Duty to defend; general commercial liability insurance coverage; opioid epidemic litigation; declaratory judgment; final order; R.C. 2505.02(B)(2); Civ.R. 54(B); summary judgment; Civ.R. 56.

We affirm the trial court's order granting Discount Drug Mart's motion for summary judgment and finding and declaring that Cincinnati Insurance Company has a duty to defend Discount Drug Mart in underlying lawsuits brought by Cuyahoga and Summit Counties for Discount Drug Mart's alleged role in the opioid epidemic. The trial court's judgment is a final, appealable order because it affects a substantial right made in a special proceeding. The counties' claims against Discount Drug Mart for absolute public nuisance potentially or arguably seek "damages" "because of bodily injury" and "caused by an occurrence" within the meaning of the general commercial liability insurance policies.

110246 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE v MMCO, LLC, ET AL.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: Summary judgment; fraud; piercing the corporate veil; collateral estoppel.

The trial court erred in granting summary judgment in favor of Medical Mutual for fraud because Medical Mutual did not establish damages for fraud beyond those damages it suffered for breach of contract. The trial court did not err in considering a judgment from a California proceeding and piercing the corporate veil to hold the appellants jointly and severally liable to Medical Mutual. The trial court did not err in granting Medical Mutual leave to file a third summary judgment motion and striking the third summary judgment motion of one of the appellants.

110378 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: E.S., JR.

Affirmed.

Mary Eileen Kilbane, J., and Anita Laster Mays, J., concur; Sean C. Gallagher, P.J., dissents with a separate opinion.

KEY WORDS: Bindover; mandatory bindover; R.C. 2152.10; R.C. 2152.12; probable cause; involuntary manslaughter; Juv.R. 30; credibility; sufficient credible evidence.

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(Case 110378 continued)

The trial court did not err or abuse its discretion in denying the state's motion for mandatory bindover and concluding that the state failed to present sufficient credible evidence to establish probable cause that the juvenile committed the offense of involuntary manslaughter. The trial court was in the best position to determine the credibility of the testimony presented at the probable cause hearing and the record contains ample statements by the court expressing doubt and at times incredulity at the state's evidence.

110419 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
J.L.C. v J.V.C.

Dismissed.

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

KEY WORDS: R.C. 2505.02; final appealable order; Civ.R. 45; motion to quash subpoena.

The trial court's grant of a motion to quash a subpoena is not a final appealable order under R.C. 2505.02. Mother has an effective and meaningful remedy by appealing the decision following final judgment in the action.

110463 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GEOFFREY M. FORD

Reversed and remanded.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Gross sexual imposition; erogenous zones; motion to dismiss the indictment.

In filing a motion to dismiss the gross sexual imposition counts involving the minor victim's neck and hip, appellee essentially asked the trial court to dismiss these charges without affording the state an opportunity to produce evidence regarding the manner and nature of the touching to prove that these body parts can be perceived by the offender, the victim, or a reasonable person as sexually arousing or gratifying and that they were touched for such sexual purposes. While the neck and hip of a male body may not be inherently sexual, the state should be allowed to produce evidence regarding the circumstances and context of the touching to prove these are erogenous zones touched for sexual arousal or gratification purposes. Appellee's argument in support of a dismissal based on his claim that the hip and neck of a male body is not an erogenous zone as a matter of law is without merit.

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110511 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NATALIE LOCKE

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Postsentence motion to withdraw plea; Crim.R. 32.1; First Amendment; free speech; assault; obstruction of official business; R.C. 2903.13(A); R.C. 2921.31(B).*

A defendant does not have a First Amendment right to assault a police officer, and therefore, any failure of trial counsel to explain that fact cannot constitute a manifest miscarriage of justice for the purpose of Crim.R. 32.1.

110546 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
ESTATE OF JOSHUA MILLSTEIN, DECEASED

Affirmed.

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., J., and James A. Brogan, J.,*concur.
*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

KEY WORDS: *Estate; beneficiary; administrator; settlement agreement; de novo; R.C. 2115.16; exceptions to inventory; hearing on inventory; exceptions to final account; motion to remove administrator; R.C. 2109.50; concealment proceeding.*

Estate and appellant-beneficiary were parties to a settlement agreement that contemplated appellee-administrator as a “representative” of the estate and precluded as a “future dispute” appellant’s exceptions to appellee’s final account, motion to remove appellee as administrator of the estate, and discovery motions related to appellant’s motion to remove appellee as administrator of the estate.

110557 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v P. J. U.

Affirmed.

Lisa B. Forbes, J., Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Application to seal record of conviction; expungement; res judicata; successive motions; change in circumstance.*

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(Case 110557 continued)

The doctrine of res judicata bars successive applications to seal a record of conviction absent a demonstration of a change in circumstances. Because appellant's first application to seal his criminal record was denied in 2005 and he has not demonstrated a change in circumstances, he was barred by res judicata from filing a new application.