

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 3

February 25, 2021

109411 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROBERT BERRYHILL v RUSTOM R. KHOURI, ET AL.

Affirmed.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Civ.R. 12(C); motion for judgment on the pleadings; compulsory counterclaim; logically related; business relationship; res judicata; transaction or occurrence.*

Upheld the trial court's decision to grant appellees' Civ.R. 12(C) motion for judgment on the pleadings when it appeared beyond doubt that the appellant could prove no set of facts warranting the requested relief. Appellant's claims, which were logically related to the claims raised in the prior action pertaining to the parties' business relationship and an ownership interest, were compulsory counterclaims that should have been raised in a prior action, and the action was barred by res judicata. A Civ.R. 12(C) motion for judgment on the pleadings may be granted when the determination of res judicata does not depend on documents outside of the pleadings.

109460 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LAKESIDE PRODUCE DISTRIBUTION, INC. v AMY WIRTZ, ET AL.

Affirmed.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Civ.R. 12(B)(6); failure to state a claim; contract; reasonably certain; definite; aspirational.*

Trial court properly dismissed plaintiffs' breach of contract claim where the disputed contract language was aspirational in nature and did not create a binding obligation.

109461 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JOSEPH M. HOAG v ENTERPRISE HOLDINGS, ET AL.

Reversed in part, dismissed in part.

Mary Eileen Kilbane, J., Mary J. Boyle, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Motion to disqualify; abuse of discretion; motion to*

CASE DECISION LIST

(Case 109461 continued)

compel; final appealable order; substantial hardship; Prof.Cond.R. 37; waiver.

We overturned the decision of the trial court granting the defendant-appellee's motion to disqualify plaintiff-appellant's counsel for an abuse of discretion. We found that the appellees waived their right to the motion by delaying and that the delay, and the disqualification, would create a substantial hardship for the plaintiff.

The plaintiff-appellant also appealed the decision of the trial court denying his motion to compel business records but we found that did not constitute a final appealable order.

109496 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v TYSHAWN SHEPHERD

Affirmed.

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

KEY WORDS: Motion to vacate postrelease control; void; voidable; res judicata.

Res judicata barred the defendant's challenge to postrelease control because he did not challenge the alleged sentencing error on direct appeal.

109555 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WELLS FARGO BANK N.A. v VIRGIL H. COLLINS, ET AL.

Affirmed.

Mary Eileen Kilbane, J., Larry A. Jones, Sr., P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Foreclosure; Civ.R. 60(B); abuse of discretion; fraud; default judgment.

The trial court did not abuse its discretion in denying appellant's Civ.R. 60(B) motion where the motion failed to set forth a meritorious defense or claim to present against the foreclosure claim and failed to establish entitlement to relief. Appellant's unsupported assertion that he was fraudulently induced to enter into a mortgage does not satisfy the requirements of Civ.R. 60(B). Further, a Civ.R. 60(B) motion cannot be used as a substitute for an appeal to collaterally attack a foreclosure judgment.

CASE DECISION LIST

109804 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DONELL PARKER

Affirmed.

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

KEY WORDS: *Nunc pro tunc; clerical; void; jurisdiction; conviction; sentence; direct appeal; res judicata; indictment; defective.*

The trial court properly exercised its continuing jurisdiction to issue a nunc pro tunc journal entry and defendant is barred by res judicata from challenging the validity of the trial court's corrected journal entry. Whether an indictment was defective was an issue that could have been raised on direct appeal. Defendant did not challenge the sufficiency of his indictment at trial or on direct appeal and, therefore, res judicata barred his attempt to raise the issue of a defective indictment many years after his conviction.

109995 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE L.S.

Affirmed.

Eileen A. Gallagher, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Complaint for permanent custody; R.C. 2151.353(A)(4); determination that child cannot be placed with parent within a reasonable time or should not be placed with parent; R.C. 2151.414(E); best interest of the child; R.C. 2151.414(D)(1); clear and convincing evidence; abuse of discretion.*

Juvenile court did not abuse its discretion in determining permanent custody was in the best interest of the child. Although mother showed initiative in completing case plan services, competent, credible, clear and convincing evidence supported the juvenile court's findings that child did not have a relationship or bond with mother, child did not want to return home to mother, child had a lengthy custodial history based on a prior case, child deserved a safe and stable environment where her needs were met and there were no other relatives with whom child could be placed, resulting in its determination that permanent custody was in the best interest of the child.