January 14, 2021

108936 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MARIA PAGANO v CASE WESTERN RESERVE UNIVERSITY

Reversed and remanded.

Mary Eileen Kilbane, J., and Mary J. Boyle, A.J., concur; Anita Laster Mays, J. concurs in part and dissents in part with separate opinion.

KEY WORDS: Civ.R. 56, summary judgment; tenure.

The trial court's grant of summary judgment in favor of appellee university regarding the denial of appellant's application for tenure is reversed. A university has broad discretion to make decisions about such matters that "must be left for evaluation by the professionals, particularly since they often involve inquiry into aspects of arcane scholarship beyond the competence of individual judges." Gogate v. Ohio State Univ., 42 Ohio App.3d 220, 226, 537 N.E.2d 690 (10th Dist.1987). However, genuine issues of material fact existed as to whether the university committed procedural errors that prejudiced the appellant's application for tenure and promotion. Accordingly, summary judgment was improper.

109000 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DESEAN D-BEY

Affirmed in part, reversed in part, and remanded.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., concur.

KEY WORDS: Guilty pleas; attempted domestic violence; nonexistent offense; invited error; motion to withdraw guilty pleas; Crim.R. 32.1; manifest injustice; evidentiary hearing; ineffective assistance of counsel; mental health evaluation; R.C. 2945.371(A); referral to mental health docket; R.C. 2953.08(G)(2); review of felony sentences; R.C. 2929.11; R.C. 2929.12; excessive sentences; court costs.

Defendant's challenge to his guilty plea to attempted domestic violence on the basis that it was a nonexistent offense was invited error. Defendant did not establish that he was prejudiced by counsel's alleged failure to advise him that he was pleading guilty to a nonexistent offense and that, if he had known this, he would not have pled guilty and would have, instead, insisted upon going to trial.

Trial court did not err in failing to order a mental health evaluation before accepting defendant's guilty pleas where no issue was raised below as to defendant's competency to enter a guilty plea or as to his sanity at the time he committed the offenses at issue and

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there is nothing in the record to suggest that defendant exhibited any outward signs of incompetency.

Defendant made no showing that defense counsel was ineffective for failing to investigate defendant's mental health, failing to request a transfer to the mental health docket, failing to explore sanity and blackout defenses or failing to provide mitigating mental health information to the trial court for consideration during sentencing.

Trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty pleas without an evidentiary hearing where defendant submitted no affidavits or any other relevant evidentiary materials in support of his motion to withdraw his guilty pleas and did not point to any specific facts in the record that could otherwise support his claim of manifest injustice.

Trial court complied with its obligations under R.C. 2929.11 and 2929.12 when sentencing defendant. An appellate court cannot review a defendant's sentences to determine whether they are excessive or otherwise not supported by the record under R.C. 2929.11 and 2929.12.

Trial court order imposing court costs reversed; case remanded for trial court to vacate imposition of court costs.

109106 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
VILLAGE OF NEWBURGH HEIGHTS, ET AL. v STATE OF OHIO

109114 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
VILLAGE OF NEWBURGH HEIGHTS, ET AL. v STATE OF OHIO

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, A.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: H.B. 62; traffic cameras; preliminary injunction; irreparable harm; likelihood of success on the merits; public interest; constitutionality of a statute; home rule amendment.

The trial court's judgment denying the cities' motions for preliminary injunction was affirmed with respect to the provision of H.B. 62 that stated municipal courts have exclusive jurisdiction over challenges to citations from a traffic camera. However, the trial court's judgment denying the cities' motions for preliminary injunction was reversed with respect to two provisions of H.B. 62 that (1) reduced the cities' local government funds and (2) required the cities to pay advance court deposits because these two provisions violate the Home Rule Amendment.

109147 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CASSANDRA WILTZ v THE CLEVELAND CLINIC, ET AL.

109483 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CASSANDRA WILTZ v THE CLEVELAND CLINIC, ET AL.

Affirmed.

Patricia Ann Blackmon, J., Sean C. Gallagher, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Medical malpractice; pro se plaintiff; dismissal for failure to file affidavit of merit; motion for leave to amend complaint; state of limitations; cognizable event; service by mail; presumption of proper service; motion for relief from judgment.

Dismissal of pro se plaintiff's medical malpractice complaint against 20 defendants affirmed. Complaint was filed after the statute of limitations expired, and plaintiff failed to file the affidavit of merit required by Civ.R. 10(D).

109195 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v S.D.K.

Affirmed.

Mary J. Boyle, A.J., Sean C. Gallagher, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Violation of protection order; R.C. 2919.27(A)(1); furthermore clause; R.C. 2919.27(B)(3); manifest weight of the evidence; prior conviction as essential element of the crime.

The defendant's conviction for violating a protection order is not against the manifest weight of the evidence despite conflicting witness testimony. The trial court did not err in admitting evidence that the defendant had a prior conviction for violating a protection order. Such evidence was necessary to prove the element of the "furthermore clause" that the defendant had a prior conviction for violating a protection order.

109211 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v AONORICO R. DAVIS

Affirmed.

Mary Eileen Kilbane, J., and Eileen T. Gallagher, P.J., concur; Larry A. Jones, Sr., J., dissents with separate dissenting opinion.

KEY WORDS: Consecutive sentences; clearly and convincingly;

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rape; sexual battery; first-time offender; R.C. 2929.14(C)(4).

Defendant-appellant challenges the imposition of consecutive sentences on the grounds that the record does not clearly and convincingly support the findings made by the trial court. Defendant argues that because he was a first-time offender and that there is nothing to indicate he would reoffend. The record clearly and convincingly supported the imposition of consecutive sentences because of the seriousness of the defendant's conduct, the trauma of the victim, and the risk the defendant posed in the future.

109294 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDWARD BLANTON

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Jury instruction; aggravated robbery; theft; define; common usage; sufficient evidence; plain error; removal of juror for cause; retaliation; abuse of discretion.

Trial court's failure to define theft for the jury in jury instruction regarding aggravated robbery was not plain error where the term is one of common usage and was used that way in the jury instruction, and there was sufficient evidence in the record to establish all the elements of the offense of aggravated robbery; the trial court did not abuse its discretion by not removing a juror for cause where the juror assured the court repeatedly that she could be fair and impartial despite her fear of retaliation, and her assertions were deemed credible.

109300 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GUS GEORGALIS, TRUSTEE OF THE ARAHOVA TRUST, ETC. v
CLOAK FACTORY CONDOMINIUM UNIT OWNERS' ASSOC.

Affirmed.

Mary J. Boyle, A.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: KEYWORDS: R.C. 5311.23; breach of contract; declaration and bylaws; condominium unit owners' association; summary judgment.

The trial court's judgment granting partial summary judgment to the condominium unit owners' association was affirmed. There was no ambiguity in the declaration or bylaws that all unit owners must pay their share of the parking costs under the parking lease even if they

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did not have a parking space assigned to their unit.

109532 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE

J.E.M. v D.N.M.

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Child support; motion to modify child support; R.C. 3119.79.

The trial court's judgment modifying child support is affirmed because the court did not apply the child support statutes retroactively to mother's child support obligation incurred before the effective date of amended R.C. Chapter 3119. The amended statutory provisions only impacted her child support obligations after the effective date.

109562 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO

JPMORGAN CHASE BANK v NANCY L. LOSEKE, ET AL

Affirmed.

Eileen A. Gallagher, J., Larry A. Jones, Sr., P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Civ.R. 56; summary judgment; foreclosure; note; mortgage.

In a foreclosure action, where the plaintiff presents evidence to establish that it is entitled to summary judgment, the defendant's speculation and unsupported assertions to the contrary do not demonstrate genuine issues of material fact for trial. Where the plaintiff's evidence demonstrates that it is the holder of the note, has an interest in the mortgage and the amount of principal and interest due, the defendant's unsubstantiated claims to the contrary are an insufficient basis by which to deny summary judgment.