

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 1, 2021

109459 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RU-EL SAILOR

Affirmed.

Sean C. Gallagher, P.J., and Emanuella D. Groves, J., concur; Mary Eileen Kilbane, J., concurs in judgment only.

KEY WORDS: *Mootness doctrine; void; voidable; collateral attack; jurisdiction to correct sentence; res judicata.*

The trial court correctly determined that it lacked jurisdiction to modify the final sentence based on the doctrine of void sentences and based on the fact that the defendant had completely served his sentence before the sentencing issues were raised in a postconviction motion seeking to collaterally attack the final entry of conviction.

109572 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL PRESTON

Affirmed.

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

KEY WORDS: *Murder; felonious assault; aggravated robbery; theft; identification; DNA; forensic; photo array; sufficient; manifest weight; autopsy; relevant; consecutive sentence; felony sentencing; credibility; blind administrator; serious physical harm; lesser-included offense.*

Defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not err by denying defendant's request for a jury instruction on the lesser-included offense of simple assault. The trial court did not abuse its discretion by admitting relevant autopsy photographs. The investigating detective did not improperly comment on the veracity of the victim's identification. Because the trial court made the requisite findings during the sentencing hearing under R.C. 2929.14(C)(4), incorporated the findings into its sentencing journal entry, and the findings are clearly and convincingly supported by the record, the trial court did not err in imposing consecutive sentences.

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109578 CLEVELAND HTS. MUNI. G CIVIL MUNI. & CITY
INTERSTATE DEVELOPMENT LIMITED PARTNERSHIP v TIERA BRIGGS

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *App.R. 9(B); failure to file transcript; judicial bias; failure to object or raise error in trial court; R.C. 2701.031; affidavit of disqualification.*

Because appellant failed to file a transcript of the proceedings in this matter, we must accept the factual findings of the trial court and cannot find that the judgment was against the manifest weight of the evidence. Further, since appellant did not raise the issue of judicial bias in the trial court or file an affidavit of disqualification of the judge, we cannot consider this claimed error on appeal.

109760 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
DANIA AL-BERMANI v RAFID A.H. FADUL

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Uniform Interstate Family Support Act; R.C. Chapter 3115; registration of foreign support order; defenses; vacate registration; R.C. 3115.607; full or partial payment.*

The trial court did not err in declining to vacate registration of the foreign support order because appellant failed to establish that he made full payment of the order, and the defense of partial payment does not apply to an ongoing support order. Issues involving enforcement or modification of the foreign support order were not addressed by the trial court and thus were not before this court.

109781 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WALI KAMAL

Affirmed and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Gross sexual imposition; consecutive sentences; findings; R.C. 2953.08; R.C. 2929.14; nunc pro tunc journal entry.*

The trial court made the required consecutive sentence findings at

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the sentencing hearing, and the trial court's consecutive sentence findings are clearly and convincingly supported by the record. The trial court did not incorporate all of the consecutive sentence findings made at the sentencing hearing into the court's sentencing journal entry. The matter is remanded for the limited purpose of issuing a nunc pro tunc sentencing journal entry incorporating all of the consecutive sentence findings the trial court made at the sentencing hearing.

109805 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEE ROGERS

Affirmed.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Motion to correct illegal sentence; void sentence; voidable sentence.

Where it was undisputed that trial court had both subject-matter jurisdiction over defendant's case and personal jurisdiction over him, defendant's sentences were not void. Even if the trial court had erred in sentencing defendant, his sentences would be voidable, not void, and defendant could not challenge them through a postconviction motion for resentencing.

109825 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GEOROME WASHINGTON v OUTRAGE INC., (DBA) GEPPETTO'S

Affirmed.

Mary Eileen Kilbane, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Summary judgment; negligence; invitee; actual notice; constructive notice; defect; abuse of discretion; Civ.R. 56; discovery; de novo.

The trial court did not abuse its discretion in enforcing its own discovery deadline and declining to consider evidence submitted by plaintiff in violation of Civ.R. 56. Summary judgment in favor of defendant was proper where there was no genuine issue of material fact as to plaintiff's negligence claim because defendant did not have actual or constructive notice of a defect prior to plaintiff's injury.

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109870 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES DRIFFIN

Affirmed.

Emanuella D. Groves., J., Larry A. Jones, Sr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 11; guilty plea; knowingly, intelligently, and voluntary; constitutional guarantees; waiving constitutional rights; and prejudice.*

Due process requires that a defendant's plea be made knowingly, intelligently, and voluntarily; otherwise, the defendant's plea is invalid. When a trial court fails to explain the constitutional rights that a defendant waives by pleading guilty or no contest, we presume that the plea was entered involuntarily and unknowingly, and no showing of prejudice is required.

To aid our analysis, the Ohio Supreme Court in State v. Dangler, 162 Ohio St.3d 1, 2020-Ohio-2765, 164 N.E.3d 286, provided a three-question test namely: (1) has the trial court complied with the relevant provision of [Crim.R. 11]? (2) if the [trial] court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?

Although the trial court incorrectly stated, at the plea hearing, that appellant could get up to 25 percent of earned reduction of minimum prison term ("ERMPT") or "good-time" credit under the Reagan Tokes Law, if he behaved in prison, appellant was not prejudiced. Our review reveals that appellant's objective was to strike an agreement whereby he would serve no more than eight years. The trial court stated that it would impose a sentence of ten and one-half years and that there was significant discussion that, with the almost one year that appellant had been in jail, along with the 15 percent good-time credit, he would reach that objective if he behaved well.

Appellant is unable to establish any prejudice by the trial court's misstatement, because the plea agreement struck with the state and the sentence the trial court imposed allowed appellant to achieve his stated objective of serving eight years. There is no evidence that appellant would not have pled guilty, but for the trial court's misstatement.

109918 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v J. A.

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Affirmed.

Larry A. Jones, Sr., J., Frank D. Celebrezze, Jr., P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Petition for postconviction relief; evidentiary hearing; ineffective assistance of counsel; abuse of discretion.*

There was no abuse of discretion where the trial court denied appellant's petition for postconviction relief without first conducting a hearing. Although appellant's claims fell under the doctrine of res judicata, the trial court, after considering appellant's claims, found that witness testimony and forensic evidence sufficiently sustained appellant's convictions.

110001 LAKEWOOD MUNI. G CIVIL MUNI. & CITY
YOLANDA HOLLIDAY v CALANNI ENTERPRISES, INC.

Reversed and remanded.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Civ.R. 41(B)(2); dismissal; breach-of-contract; bench trial; car repairs.*

Trial Court erred in denying defendant's Civ.R. 41(B)(2) motion to dismiss following the presentation of plaintiff's case during a bench trial on a breach-of-contract action. Plaintiff failed to present evidence proving that the subsequent issues experienced with her vehicle were related to the repairs that the defendant made or was supposed to make to her vehicle.

110023 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ESTATE OF MARY BATTLE-KING v HEARTLAND OF TWINSBURG, ET AL.

Reversed and remanded.

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

KEY WORDS: *arbitration; motion to stay; R.C. 2711.02*

We reversed the trial court's judgment denying the defendant's motion to stay the case pending arbitration for the trial court to hold an evidentiary hearing. Although a trial court does not normally have to hold a hearing on a motion to stay pursuant to R.C. 2711.02, it must be satisfied that the action is or is not referable to arbitration. Because of the parties' competing evidence, the trial court could not make this determination without holding a hearing.

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110069 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILMER FIGUEROA, ET AL. v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

Reversed and remanded.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. Chapter 2744; political subdivision immunity; negligence; breach of duty; de novo standard of review; summary judgment; Civ.R. 56; genuine issue of material fact; App.R. 9(B); transcript.*

Summary judgment was improper because genuine issues of material fact remained as to the circumstances of the collision. Further, because of appellants' failure to file a transcript of the hearing, we must presume the validity of the hearing on appellants' motion to enforce the parties' agreement to conduct a trial on the issue of liability only with stipulated damages.

110106 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
WILLIAM M. KOEBLITZ v VICKI K. KOEBLITZ

Affirmed.

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

KEY WORDS: *Divorce decree; separation agreement; receivership; fees and costs; equity.*

The trial court did not abuse its discretion in ordering the fees and costs associated with the receiver's defense of a collateral attack in a separate court action on the receiver's authority and the separation agreement that was incorporated into a final divorce decree.

110210 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: R.S., ET AL.

Affirmed.

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

KEY WORDS: *Permanent custody; best interest of the child; manifest weight; legal custody; unsworn testimony; GAL recommendation; certified foster parents; plain error.*

Trial court properly granted permanent custody of children to

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CCDCFS where evidence showed children could not be placed with their parents within a reasonable time and permanent custody was in the children's best interest.

Court's decision to allow foster parents and guardian ad litem to provide unsworn testimony did not amount to plain error.

110241 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.R.

Reversed.

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

KEY WORDS: Mandatory bindover; R.C. 2152.10(A)(2); R.C. 2152.12(A)(1)(b)(ii); Juv.R. 30(A)-(B); aggravated robbery; probable cause.

Probable cause existed to believe juvenile committed the offense of aggravated robbery based on officers' testimony that victim had identified juvenile as the perpetrator during a cold stand conducted fifteen minutes after the incident, clothing juvenile was wearing matched clothing reported to have been worn by the perpetrator during the incident, a gun was recovered in the area in which juvenile had fallen during police chase immediately following the incident and juvenile told police that another male "told him to do it" and "somebody gave me the gun." Juvenile court, therefore, erred in denying state's request for mandatory bindover.

110284 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN THE MATTER OF: G.L.

Affirmed.

Emanuella D. Groves, J., Sean C. Gallagher, P.J., and Larry A. Jones, Sr., J. concur.

KEY WORDS: Permanent custody; abuse of discretion; continuance; case plan; best interest; manifest weight; competent, credible evidence; R.C. 2151.414(B); R.C. 2151.414(D)(1); R.C. 2151.414(D)(2); R.C. 2151.414(E).

Affirmed award of permanent custody to children services agency. We find no abuse of discretion in connection with the juvenile court's denial of Mother's motion for a continuance. The motion did not comply with the rules of court because it was made on the day of trial. Also, Mother did not challenge the juvenile court's notice or service of notice of the hearing. In addition, the matter had been pending for more than a year by the time the trial was conducted. Further, Mother's argument that the motion for

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continuance should have been granted because of COVID-19 concerns is not well taken. Mother’s stated reason for requesting a continuance was her inability to afford a bus ticket. Yet, when the caseworker offered Mother a bus ticket to facilitate her attendance at the trial, Mother declined. Thus, Mother failed to demonstrate good cause for a continuance.

The record contained competent, credible evidence from which the juvenile court could have found the essential statutory elements for an award of permanent custody were established, and the juvenile court’s decision to grant permanent custody to the agency, and the termination of Mother’s parental rights were not against the manifest weight of the evidence. The termination of parental rights is governed by R.C. 2151.414, which sets forth a two-part test courts must apply when deciding whether to award permanent custody to a public services agency. Under the first prong, R.C. 2151.414(B), the juvenile court found that the child had been in temporary custody of the Cuyahoga County Division of Children and Family Services, for twelve (12) or more months of a consecutive twenty-two (22) month period. Specifically, the child had been in the temporary custody of the agency since October 7, 2019. Under the second prong, R.C. 2151.414(D), considering whether permanent custody was in the best interest of the child, the juvenile court found, and the record established all the relevant factors. Mother did not fully engage in the case plan, lacked commitment to addressing her chronic mental illness and chemical dependence. Mother’s lack of compliance with the case plan rendered her incapable of caring for her special needs child, who was in a foster home that was medically licensed, with a foster mother, who was a nurse, that specialized in the care of children with the child’s challenges, and who had access to nurses and aides to assist with the child’s care. The juvenile court did not abuse its discretion in awarding permanent custody to the agency.

110303	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: C.T.			

Affirmed.

Eileen A. Gallagher, J., Anita Laster Mays, 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; R.C. 2151.412(H)(2); recommendation of guardian ad litem; R.C. 2151.424(A); statements by foster parents.*

Juvenile court did not abuse its discretion in determining that granting permanent custody to agency rather than legal custody to maternal aunt was in the best interest of the child. The record reflects that the juvenile court carefully considered and weighed all

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of the relevant factors in determining that permanent custody was in the child's best interest. The willingness of a relative to care for a child does not alter what a court must consider when determining whether to grant permanent custody. Juvenile court was not required to follow the recommendation of the guardian ad litem. Juvenile court did not commit plain error by permitting foster parents to give unsworn statements, which were not subject to cross-examination, at the permanent custody hearing. Mother did not object to the foster parents' unsworn statements, she did not request an opportunity to cross-examine the foster parents regarding their statements and she failed to demonstrate that she was prejudiced as a result of the foster parents' statements.

110445	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JEFFERY WATKINS			

Reversed and remanded.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Conceded error; petition to seal record; R.C. 2953.31; eligible offender; R.C. 2953.32; notice; R.C. 1901.31(E).*

Trial court erred in summarily denying petition to seal records, determining that petitioner was ineligible, without giving the parties notice of the proceedings and without following the procedure required under R.C. 2953.32.