

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 8, 2021

108810 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MUSIAL OFFICES, LTD. v CUYAHOGA COUNTY, ET AL.

Affirmed.

Sean C. Gallagher, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Frivolous conduct; R.C. 2323.51; untimely appeal; not warranted under existing law; sanctions; abuse of discretion; final appealable order; R.C. 2744.02(C); interlocutory appeal; motion for reconsideration; award of attorney fees; excessive; reasonably incurred.*

The trial court did not err in finding that the county's filing of an untimely appeal constituted frivolous conduct and awarding attorney fees. The amount of attorney fees awarded was neither excessive nor insufficient.

109338 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JACOB J. STONE

Affirmed.

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

KEY WORDS: *Aggravated murder; bench trial; opinion testimony; abuse of discretion; ineffective assistance of counsel; manifest weight of the evidence; sufficiency of the evidence; R.C. 2953.08(D)(3).*

The trial court did not abuse its discretion in permitting a lay witness to testify as to her opinion of various symbols where the testimony was founded on the witness's personal experience and perception. The defendant did not receive ineffective assistance of counsel where counsel did not object to the exclusion of evidence regarding a trace metal detection test because the evidence was relevant and did not prejudice the defendant. The defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence where the record contained ample evidence, including a lengthy recording of the defendant's own statement to law enforcement, detailing the defendant's involvement in planning the victim's murder and attempting to evade prosecution for his crimes. The defendant's sentence for aggravated murder in violation of R.C. 2903.01(A) was not subject to appellate review pursuant to R.C. 2953.08(D)(3).

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109553 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
OLIVE OIL, LLC v CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.

Affirmed in part, reversed in part, remanded.

Eileen A. Gallagher, J., and Anita Laster Mays, P.J., concur; Lisa B. Forbes, J., concurs in judgment only in part and dissents in part.

KEY WORDS: *Civ.R. 41(B); Civ.R. 50(A); App.R. 12; App.R. 16; directed verdict; motion for summary judgment; trespass; civil conspiracy; R.C. 2307.60; R.C. 2307.61; declaratory judgment; owner-opinion testimony; harmless error.*

A trial court errs by granting a directed verdict on a trespass claim on the basis that the plaintiff failed to prove a non-essential element of the claim. Actual damages is not an element of trespass and it is error for a trial court to dismiss a trespass claim on the basis that the plaintiff failed to prove actual damages.

A trial court does not err by granting a directed verdict on a civil conspiracy claim where the plaintiff fails to prove it suffered actual damages. Moreover, on appeal from a directed verdict on a civil conspiracy claim, an appellant fails to meet its burden where the appellant fails to identify any evidence in the record establishing actual damages.

A trial court does not err by granting a directed verdict on a claim pursuant to R.C. 2307.60 and 2307.61 where the plaintiff fails to prove that the defendant committed a criminal act that injured it in person or in property. Moreover, on appeal from a directed verdict on a claim pursuant to R.C. 2307.60 and 2307.61, an appellant fails to meet its burden where the appellant fails to identify any evidence in the record establishing that the defendant committed a criminal act that injured it in person or in property.

A trial court errs by dismissing a plaintiff's claim for lack of prosecution where the record reflects that plaintiff's counsel was present for the entirety of trial and the plaintiff's personal representative was present for its case-in-chief, including the representative's direct and cross-examinations, but was not present for the defendant's case-in-chief. However, that error is harmless where the count dismissed consists of a claim that is outside the scope of the declaratory judgment act.

A trial court errs when it grants a motion in limine preventing a property owner from testifying about the value of the property as well as the diminution in the property's value following an event. However, it is a harmless error to grant a motion in limine preventing a property owner from testifying about the monetary damage to property where the owner nevertheless testifies to the same at trial.

Any error by a trial court in denying a motion for summary judgment is rendered moot or harmless if a subsequent trial on the same issues raised in the motion demonstrates that there were

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genuine issues of material fact supporting a judgment in favor of the party against whom the motion was made.

109694 GARFIELD HTS. MUNI. C CRIMINAL MUNI. & CITY
S/O CITY OF GARFIELD HEIGHTS v MALCOLM MARTIN

Affirmed.

Mary J. Boyle, A.J., Larry A. Jones, Sr., J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Assault; R.C. 2903.12; aggravated menacing; R.C. 2903.21; manifest weight; credibility.

Appellant's assault and aggravated menacing convictions are not against the manifest weight of the evidence.

109890 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL DAVIS

Affirmed.

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

KEY WORDS: Mistrial; sua sponte; manifest necessity; double jeopardy; plain error; self-representation; jury instruction; flight; self-defense.

Trial court did not abuse its discretion or commit plain error in sua sponte declaring a mistrial due to manifest necessity where the defendant's actions and protestations about self-representation and dissatisfaction with counsel occurred in front of the jury. As such, retrial did not violate the double jeopardy protections. Trial court erred in giving the jury an instruction on flight because the evidence did not warrant the instruction. However, the error was not prejudicial to be deemed plain error. Trial court did not abuse its discretion in denying defendant's request for a self-defense instruction because the defendant denied committing the offense and, thus, effectively was not acting in self-defense.

109914 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v PATRICK CARNER

Affirmed.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Tampering with evidence; obstructing official business; Crim.R. 43; waiver; prejudice; plain error; harmless error; threat; reindictment; plea bargain; ineffective assistance; mitigation; merger; allied offenses; victim impact; seriousness; criminal history; R.C. 2929.11; R.C. 2929.12; maximum; consecutive sentences.*

Affirmed appellant's convictions for tampering with evidence and obstructing official business and the maximum, consecutive sentences that were imposed by the trial court. Appellant failed to show any prejudicial or constitutional error occurred with regard to his right to be physically present and the Crim.R. 43 waiver of appearance. The assistant prosecutor is permitted to use the possibility of reindictment on more serious charges to persuade a defendant to accept a plea deal. Defense counsel did not render ineffective assistance with regard to the presentation of mitigating evidence, which is a matter of trial strategy, or with regard to merger, because the offenses were committed separately. There was no reversible error regarding victim impact testimony, and the record showed the trial court engaged in proper consideration of the seriousness of the crimes charged and the defendant's criminal history when imposing sentence. The trial court properly considered R.C. 2929.11 and 2929.12, and made the required findings for imposing consecutive sentences.

109937 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BOBBY LEWIS

Affirmed.

Mary J. Boyle, A.J., Sean C. Gallagher, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Sufficiency of the evidence; manifest weight of the evidence; complicity; aiding and abetting.*

The defendant's convictions are affirmed. The state presented sufficient circumstantial evidence that the defendant aided and abetted another in committing robbery. Defendant's convictions are also not against the manifest weight of the evidence.

110063 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ZUKERMAN LEAR & MURRAY CO. LPA v CHARLES D. SNYDER, ET AL.

Dismissed.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Final, appealable order; Civ.R. 54(B); necessities doctrine.*

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(Case 110063 continued)

Appeal dismissed for lack of a final, appealable order where the claim involved in the interlocutory appeal touches the same facts, legal issues and circumstances of the remaining claims.

110141 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JOHN E. KOBAL v BRIAN A. COLE AND ASSOCIATES, ET AL.

Affirmed.

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

KEY WORDS: Motion to dismiss; res judicata; pro se litigant.

Pro see appellant is barred by the doctrine of res judicata from relitigating claims and issues alleged in his complaint that are identical to claim and issues he alleged in a previous complaint that was dismissed based on various statutes of limitations.