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Court of Appeals, Eighth Appellate District

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July 22, 2021

109319 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLOW GROVE, LTD. v OLMSTED TOWNSHIP BOARD OF ZONING APPEALS, ET AL.

Affirmed in part, reversed in part, and remanded.

Michelle J. Sheehan, J., and Anita Laster Mays, J., concur; Mary J. Boyle, A.J., concurs in part and dissents in part (with separate opinion attached).

KEY WORDS: *R.C. 2506.04; appeal of zoning board determination; R.C. 519.17.*

An appeal of a court of common pleas decision under R.C. 2506.04 may be taken on questions of law. Appellate review is limited, and the court may reverse a trial court's determination when the common pleas court errs in its application or interpretation of the law or its decision is unsupported by a preponderance of evidence. R.C. 519.17 prohibits the issuance of a zoning certificate when an application for a zoning certificate does not fully comply with applicable zoning regulation. The trial court erred by ordering the issuance of a zoning certificate after it found that the application did not fully comply with applicable zoning regulations.

109469 BOARD OF TAX APPEALS H ADMIN APPEAL
THISTLEDOWN RACETRACK, LLC, ET AL. v
CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

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

KEY WORDS: *Tax appeal; tax valuation; commercial appraisal; collateral estoppel.*

The decision of the Ohio Board of Tax Appeals is reasonable and lawful. Collateral estoppel bars the Board of Education's argument that the Ohio Board of Tax Appeals made an incorrect legal conclusion when it rejected Bovard's appraisal method. The Ohio Board of Tax Appeals did not abuse its discretion when it adopted Sangree's valuations for the property.

109630 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEMETRIUS BEARD

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Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, J., and Anita Laster Mays, P.J., concur; Mary Eileen Kilbane, J., dissents with separate attached opinion.

KEY WORDS: *Sierah's Law; violent offender database; allied offenses; kidnapping; robbery; plea agreement; retroactivity; remedial; substantive; punitive; collateral consequence; guilty plea; ineffective assistance of counsel; plain error.*

Trial court erred in failing to merge allied offenses where parties agreed that robbery and burglary were allied offenses and the defendant's kidnapping conviction were incidental to the other two allied offenses.

The violent offender database registration requirements enacted by Sierah's Law are remedial in nature and therefore do not offend the Constitution's prohibition against the passage retroactive laws.

The trial court was not required to inform the defendant of violent offender registration requirements under Sierah's Law because the registration requirements are collateral consequences of conviction rather than punishment.

Trial court's failure to comply with mandatory provision requiring it to advise the defendant of his right to rebut the presumption that he is a violent offender required to enroll in Ohio's violent offender database before sentencing was plain error.

Defendant established a claim of ineffective assistance of counsel resulting from counsel's failure to move to rebut presumption that the defendant is a violent offender required to enroll in Ohio's violent offender database.

109764 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE EX REL., FRANCIS LALLY, JR., ET AL. v CITY OF CLEVELAND, OHIO, ET AL.

Vacated and remanded.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Taxpayer's suit; R.C. 733.59; demand letter to the law director; standing.*

Appellant taxpayer and firefighters' union failed to send a demand letter to the city's law director prior to filing a taxpayer's suit as required by the statute and, therefore, failed to establish standing for their mandamus action alleging the city's fire chief improperly circulated petitions for the reelection of the city's mayor and seeking the removal of the fire chief.

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109792 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
GWEN M. BRADLEY v CLINT BRADLEY, III

Affirmed.

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

KEY WORDS: *Divorce; magistrate's decision; objections; Civ.R. 53; plain error; App.R. 12; App.R. 16; pro se litigant; abuse of discretion; Sup.R. 40; motion for reconsideration; income; allocation of property; marital debt; spousal support; arrearage; parenting time; child support; attorney fees; guardian ad litem fees; property division; motion to compel; motion to show cause; motion to quash; shared parenting; temporary restraining order; appointment of a receiver.*

The trial court did not abuse its discretion in ruling on Husband's objections to the magistrate's decision and adopting the modified magistrate's decision. Several of Husband's assignments of error are procedurally defective based on Husband's failure to comply with App.R. 12 and 16. Husband waived all but plain error with respect to several of his assignments of error by failing to object to the magistrate's decision on the grounds set forth in these assignments of error, and Husband has failed to demonstrate that this is an exceptional case that requires application of the plain error doctrine. The trial court was in the best position to determine the credibility of the parties' testimony and evidence. We find no basis upon which to conclude that the trial court's judgment in this divorce action was unreasonable, arbitrary, or unconscionable.

109814 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
YASMINE AZIZ v CAPITAL SENIOR LIVING, INC., ET AL.

Dismissed.

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

KEY WORDS: *Dismiss; Civ.R. 54(B); final and appealable order; multiple parties; multiple claims; pending; jurisdiction.*

A trial court's order granting a defendant's motions to dismiss did not determine the action nor prevent a judgment because not all of the defendants joined in the motions to dismiss notwithstanding the fact that the trial court's order dismissed the case.

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109943 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE D.S.

110058 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE G.S.

110064 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE D.E.

Dismissed.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *App.R. 5(C); jurisdiction; dismissed; leave to appeal; concurrently.*

Appeals dismissed for lack of jurisdiction. State failed to, in accordance with App.R. 5(C), concurrently seek leave to appeal with the court of appeals when the state filed its notice of appeal in the juvenile court.

109947 CLEVELAND MUNI. G CIVIL MUNI. & CITY
CITY OF CLEVELAND v AUDREY MCINTYRE

Affirmed.

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

KEY WORDS: *Summary judgment; genuine issue of material fact.*

The trial court did not err in granting summary judgment to appellee, because the appellant did not demonstrate the existence of a genuine issue of material fact. The appellant did not produce evidence related to any issue on which the party bears the burden of production at trial. The appellant did not provide evidence that the appellee accepted the deed of the property.

109973 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BURRELL FULLER, ET AL. v UNIVERSITY HOSPITALS MEDICAL GROUP, INC., ET AL.

Affirmed.

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

KEY WORDS: *Civ.R. 56(C)/summary judgment; class certification; motion to dismiss; R.C. 3701.41/medical records; R.C. 3701.741/allowable fees for medical records; billing statements.*

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Medical records and billing statements are two separate records and are billed separately. Billing statements are not medical records. Fees for furnishing copies of billing records do not fall under R.C. 3701.741, therefore appellants' claim of overcharging for copies of the billing records fails. The trial court's granting of appellees' motion for summary judgment is proper. Appellants' claim of overcharging failed prior to class certification; appellants lack standing to represent others in a class action in this matter. There was no error where the trial court dismissed appellant's motion to certify a class.

110000 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROBERT O'BRIEN v JAMES D. SHOREY

Affirmed.

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

KEY WORDS: Summary judgment, genuine issue of material fact, marketable title, breach of contract, impossibility, bad faith, attorney fees, evidentiary hearing.

The trial court did not err in granting partial summary judgment to the appellee because the appellant did not demonstrate any genuine issue of material fact for trial. The appellant did not demonstrate that he was unable to convey clear and marketable title to the appellee, and thus breached the contract between them. The appellant's claims of impossibility are unfounded, and operated in bad faith, resulting in the trial court awarding the appellee attorney fees. The trial court did not err in awarding attorney fees because the appellant acted in bad faith. The trial court did not err in not holding an evidentiary hearing on the award of attorney fees because the appellant and appellee previously agreed that the issue of attorney fees would be decided on briefs, and the local rules allows the trial court to decide the issue without holding a hearing.

110008 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTOINE POLLARD

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Hybrid representation; pro se motion; sufficiency of evidence; merged count.

Hybrid representation is not permitted by the United States and Ohio Constitutions. The trial court did not err by stating to the appellant that hybrid representation is not allowed. When a

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(Case 110008 continued)

defendant is represented by counsel, a trial court cannot consider a defendant's pro se motion. Additionally, we cannot review the sufficiency of the evidence for a merged count because the appellant was not sentenced on the count.

110010 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL SHAUT v NATIONAL CASUALTY COMPANY

Affirmed.

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

KEY WORDS: Civ.R. 56(C)/summary judgment; directors and officers liability insurance; motion to compel discovery; expert report; breach of contract; bad-faith claim; same wrongful act; warranty exclusion.

Appellant failed to file its expert witness or expert report by the trial court's scheduled deadline; for reasons of (1) claims preceding the policy period, (2) failure to file a claim under the policy's reporting period, and (3) all claims being deemed the same wrongful act, coverage was not available for neither reported or unreported matters; appellant's omissions and misstatements were a direct cause for denial of coverage under the warranty exclusion. Appellant failed to show any genuine issue of material fact to weigh against appellee's motion for summary judgment. There was no abuse of discretion where the trial court denied appellant's motion to compel discovery, and there was no error where the trial court granted appellee's motion for summary judgment.

110257 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TREMAIN MARTIN

Affirmed.

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

KEY WORDS: Res judicata; court costs; sentencing entry.

Defendant's appeal of judgment assessing court costs is barred by res judicata where the defendant failed to raise the issue in a timely appeal.

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110302 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE N.J., ET AL.

Affirmed.

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

KEY WORDS: *Permanent custody; continuance; failure to appear; due process; good cause; best interest; case plan; engage; complete; services; 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. 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 was not against the manifest weight of the evidence. In considering whether permanent custody was in the best interest of the children, the juvenile court considered all relevant factors under R.C. 2151.414(D)(1) and found all the factors under R.C. 2151.414(D)(2) applied. Evidence showed Mother failed to complete or follow through with case-plan services and that diligent efforts were made by the agency. The juvenile court did not abuse its discretion in denying a request for continuance made by Mother's counsel on the day of trial after Mother failed to appear.

110318 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICKY JOHNSON

Affirmed.

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

KEY WORDS: *Motion for final appealable order; validity of waiver of jury trial; res judicata.*

Trial court did not err in denying defendant's motion for a final appealable order. Defendant's claims were barred by res judicata because he raised or could have raised any issues relating to the validity of his jury trial waiver in a direct appeal and/or his prior postconviction filings.