

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 20, 2021

108907 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ELVIN MALDONADO

Affirmed and remanded.

Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur; Mary Eileen Kilbane, J., concurs in judgment only.

KEY WORDS: *R.C. 2941.146; discharging firearm from a motor vehicle; R.C. 2923.162; discharging a weapon over prohibited premises; conceded error; felonious assault; five-year firearm specification (discharge firearm from motor vehicle); plain error; aggravated assault instruction; inconsistent verdicts; Sierah's Law; Violent Offender Database Registry; ineffective assistance of counsel.*

The state conceded that the R.C. 2941.146 five-year firearm specification for discharging a firearm from a motor vehicle is not applicable to a charge of discharge of a firearm over prohibited premises in violation of R.C. 2923.162; conviction for discharge of a weapon over prohibited premises was supported by sufficient evidence and was not against the manifest weight of the evidence; acquittals on one-and three-year firearm specifications were not fatally inconsistent with convictions for felonious assault with five-year firearm specification and conviction for discharge of firearm over prohibited premises; instruction on lesser offense of aggravated assault was not plain error; the state conceded that Sierah's Law was inapplicable because defendant was not convicted of a qualifying offense; claim of ineffective assistance of counsel was not well taken.

109346 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v D. S.

Affirmed in part and vacated in part.

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

KEY WORDS: *Rape; gross sexual imposition; child endangering; having weapons while under disability; felonious assault; manifest weight of the evidence; credibility; sufficiency; ineffective assistance of counsel.*

Defendant's convictions were not against the manifest weight of the evidence where the victims corroborated one another's testimony and their testimony was corroborated by photographic evidence.

There was sufficient evidence to support defendant's convictions.

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Defense counsel was not ineffective despite an alleged hearing impairment where counsel wore hearing aids, examined and cross-examined witnesses, and objected appropriately throughout trial and there was no evidence of deficient performance.

109585 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
ALLEN F. CAMPBELL v DONALD A. CAMPBELL 2001 TRUST, ET AL.

Affirmed.

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

KEY WORDS: Probate court jurisdiction; jurisdictional-priority rule; concurrent jurisdiction; beneficiary of a trust; lack of standing; claims properly dismissed for lack of standing.

Plaintiff appealed the probate court's exercise of jurisdiction over his complaint that was originally filed in the general division and he appealed its subsequent dismissal of his complaint for lack of standing. The jurisdictional-priority rule does not apply when cases are transferred within the same court and therefore did not bar the general division from transferring the case to the probate court that properly had concurrent jurisdiction to hear the case. Furthermore, as a beneficiary of a trust, where the main beneficiary and trustee was his mother, and Plaintiff's interest did not vest until his mother's death, Plaintiff lacked standing to bring claims for trustee actions that occurred before his interest vested because that interest was always subject to defeasance prior to vesting. Therefore, the probate court properly dismissed his complaint against the successor-trustee defendants.

109600 BEDFORD MUNI. G CIVIL MUNI. & CITY
MICHELLE RILEY v NATASHA PARKER, ET AL.

Vacated.

Mary Eileen Kilbane, J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Landlord-tenant; R.C. 1923.04(A); three-day notice requirement; strict compliance; party that signs notice must be party that files lawsuit; lack of subject-matter jurisdiction.

A trial court does not have jurisdiction to hear an eviction proceeding where the party that filed the lawsuit is not the party that signed the three-day notice as required by R.C. 1923.04(A).

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109693 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JONATHAN MEDINA

Affirmed.

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

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

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 appellant argues the trial court failed to ask him whether he understood that he was waiving his right to subpoena witnesses or to elicit a response that signaled an acknowledgement that he was waiving that right, our review reveals that the trial court gave the proper advisements, regarding the constitutional rights enumerated in Crim.R. 11(C)(2)(c), that ensured that appellant understood he was waiving those rights by pleading guilty. Because the trial court complied with the relevant provision of the rule, we need not engage in any further analysis under the Dangler three-question test.

109793 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
BELI DEL VALLIE GONZALEZ HERRERA v PHIL WHA CHUNG

Affirmed in part; reversed in part.

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

KEY WORDS: *Medical bills, hearsay, Evid.R. 803(6), business records exception, foundation, de facto marriage termination date, marital property.*

Trial court order that Husband reimburse Wife for half of Wife's medical bills relating to the birth of the parties' daughter vacated where Wife's exhibit regarding the medical expenses was hearsay

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and Wife failed to lay a proper foundation under Evid.R. 803(6), the business records exception to hearsay, for admission of any of the documents contained in the exhibit; trial court did not abuse its discretion in determining the de facto termination date for the marriage; trial court properly allocated marital property.

109889 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FRANCISCAN COMMUNITIES, INC., ET AL. v JASON RICE, ET AL.

Affirmed.

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

KEY WORDS: Motion for leave to file fourth amended complaint; Civ.R. 15(A); abuse of discretion; undue delay; undue prejudice.

Trial court did not abuse its discretion in denying appellants' motion for leave to file a fourth amended complaint where it reasonably determined that appellants had unduly delayed in seeking leave to amend their complaint and that appellees would be unfairly prejudiced if appellants were granted leave to file a fourth amended complaint in the current stage of the proceedings.

109895 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PATRICIA KING v WATER'S EDGE CONDOMINIUM UNIT OWNERS' ASSOC., ET AL.

Reversed and remanded.

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

KEY WORDS: Service; motion to vacate; default judgment; personal jurisdiction; void judgment; statutory agent; Civ.R. 60(B).

Trial court abused its discretion in concluding that plaintiff had perfected service on defendant where neither the defendant's principal place of business nor its statutory agent were located where service was made, and although plaintiff served the defendant at the listed address for its statutory agent, the plaintiff was on notice that service was not effective. Because service was not perfected, the trial court had no personal jurisdiction over the defendant, the default judgment against the defendant was void, and the trial court abused its discretion in denying the defendant's motion to vacate the judgment. Whether the defendant complied with Civ.R. 60(B) was immaterial because the Civ.R. 60(B) requirements are not applicable when a party asserts that the trial court lacked personal jurisdiction because service was ineffective.

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110041 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HECTOR ALMAZAN

110160 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HECTOR ALMAZAN

Affirmed.

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

KEY WORDS: *Res judicata; allied offenses; merger; sentencing.*

Appellant's arguments about his sentence, merger of certain counts, and allied offenses were barred by res judicata because appellant could have but did not raise the issues on direct appeal.

110047 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CE'MATIZEA ANDREWS

Affirmed.

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

KEY WORDS: *R.C. 2929.14(C)(4); imposition of consecutive sentence; proportionality finding; jointly recommended sentence; R.C. 2953.08(D)(1).*

Where sentences imposed by the trial court were within the sentencing range jointly recommended by the defendant and the state as part of the plea agreement and were authorized by law, the defendant's sentences, including the imposition of consecutive sentences, were not reviewable under R.C. 2953.08(D)(1).

110143 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE I.S.-S., ET AL.

Affirmed.

Anita Laster Mays, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Abuse of discretion, permanent custody, clear and convincing evidence.*

The trial court did not abuse its discretion in finding that clear and convincing evidence support granting permanent custody of the appellant's children to CCDCFS.