

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 4, 2021

110157 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEONTAY BYAS

Vacated and remanded.

Frank D. Celebrezze, Jr., P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Plea; no contest plea; involuntary; coercion; Crim.R. 11; community control violation; notice; effect of plea.*

Appellant's no contest plea is void and must be vacated. Appellant's plea was coerced by the trial court, and not entered voluntarily. The trial court failed to provide any explanation to appellant regarding the effect of his no contest plea. Because the trial court completely failed to comply with Crim.R. 11(C), appellant's no contest plea was not knowingly, voluntarily, and intelligently entered.

110220 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ALLEN MURPHY

110483 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ALLEN MURPHY

Affirmed.

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

KEY WORDS: *Postconviction relief; successive petition for postconviction relief; motion for leave; motion for new trial; res judicata; actual innocence; Brady violation; recantation; unavoidably prevented.*

The trial court did not abuse its discretion in dismissing defendant's petition for postconviction relief raising actual innocence, a Brady violation, and ineffective assistance of counsel, because the petition, the supporting evidence, and the record did not demonstrate sufficient operative facts to establish substantive grounds for relief, or in the alternative, res judicata barred his requested grounds for relief. The trial court did not abuse its discretion in denying defendant's successive petition for postconviction relief and motion for leave to file a motion for new trial because the defendant failed to show that he was unavoidably prevented from discovering the grounds or new evidence supporting his requests. The victim's alleged recantation during pretrial interviews was known to the defendant when he filed his timely petition for postconviction relief.

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110223 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE: B.J.

Affirmed in part, vacated in part, and remanded.

Mary J. Boyle, A.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Keywords: Juvenile delinquency; rape; sufficiency of the evidence; Crim.R. 29(A); manifest weight of the evidence; allied offenses of similar import; R.C. 2941.25; impeachment; Evid.R. 607(B); character evidence; Evid.R. 404(A).*

The defendant's adjudications of delinquency for two counts of rape and one count of attempted rape are supported by sufficient evidence and the weight of the evidence. The juvenile court did not err in sustaining an objection to one of defense counsel's questions to the victim because the question did not pertain to the existence of an impeaching fact. However, the three offenses are allied offenses of similar import and should have merged. We remand for a new disposition hearing.

110256 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO

SHERRI H. BESMAN v JOSEPH G. STAFFORD, ET AL.

Reversed and remanded.

Anita Laster Mays, P.J., Larry A. Jones, Sr., J.,* and Mary Eileen Kilbane, J., concur.

* Judge Larry A. Jones, Sr., concurred in this Journal Entry and Opinion prior to his death on October 7, 2021.

(The Ohio Constitution requires the concurrence of at least two judges when rendering a decision of a court of appeals. Therefore, this announcement of decision is in compliance with constitutional requirements. See State v. Pembaur, 69 Ohio St.2d 110, 430 N.E.2d 1331 (1982).)

KEY WORDS: *Bennett test; motion to compel discovery; forensic imaging; abuse discretion; motion for sanctions for spoliation.*

The trial court abused its discretion when it granted the appellee's motion to compel discovery because it did not apply the two-part test outlined in Bennett v. Martin, 186 Ohio App.3d 412, 2009-Ohio-6195, 928 N.E.2d 763 (10th Dist.), where the trial court must first weigh the necessity of obtaining the electronic discovery against any privacy concerns: A court must weigh the significant privacy and confidentiality concerns inherent in imaging against the utility or necessity of the imaging. In determining whether the particular circumstances justify forensic imaging, a court must consider whether the responding party has withheld requested information, whether the responding party is unable or unwilling to search for the requested information, and the extent to which the responding party has complied with discovery requests.

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Additionally, the trial court abused its discretion when it denied the appellants' motion for sanctions for spoliation without a hearing.

110322 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SUSAN FRANCIS v NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC.

Affirmed in part; reversed in part; remanded.

Kathleen Ann Keough, P.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Civ.R. 12(C); complaint; COVID-19; disability discrimination; hostile work environment; negligent training, retention, and supervision; R.C. 4111.14; retaliation; Ohio Whistleblower Act; wrongful discharge.

Trial court erred in granting employer's Civ.R. 12(C) motion for judgment on the pleadings on employee's claims for disability discrimination and those brought under R.C. 4111.14 because after accepting the factual allegations in her complaint as true and making all reasonable inferences in favor of employee, the complaint states a claim upon which relief can be granted. The trial court did not err in granting employer's motion for judgment on the pleadings on employee's claim for hostile work environment and negligent training, retention, and supervision. Employee did not challenge on appeal the trial court's decision granting judgment in favor of employer on employee's claims for retaliation in violation of Ohio's Whistleblower Act and wrongful discharge.

110334 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
S.H.B. v M.W.L.

Vacated and remanded.

Frank D. Celebrezze, Jr., P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Civil protection order; domestic violence civil protection order; extension; renewal; R.C. 3113.31; plain error; waiver; invited error.

The trial court committed plain error in granting appellee's motion to extend the civil protection order. Although appellee effectively requested a renewal of the protection order pursuant to R.C. 3113.31(E)(3)(c), the trial court attempted to modify and extend the protection order pursuant to R.C. 3113.31(E)(3)(a). The trial court applied the wrong standard in ruling on appellee's motion to extend the protection order. The trial court's judgment extending the protection order exceeded the maximum five-year period set forth in R.C. 3113.31(E)(3)(a). The trial court's judgment is vacated, and the matter is remanded for further proceedings. On remand, the

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protection order remains in full force and effect until the trial court issues a ruling on appellee's motion to extend the protection order.

110405 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEE JONES

Affirmed.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Crim.R. 32.1; postsentence; manifest injustice; res judicata; effective assistance of counsel; prejudice.*

Trial court did not abuse its discretion in denying defendant's Crim.R. 32.1 postsentence motion to withdraw his plea because res judicata bars his claims due to his failure to file a direct appeal. Additionally, his claim for ineffective assistance of counsel fails because even if counsel misadvised the defendant, the defendant has failed to demonstrate prejudice.

110443 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: N.N.

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 2151.353(A)(3); legal custody; R.C. 2151.011(B)(21); best interest of the child; preponderance of the evidence; abuse of discretion; completion of case plan.*

The trial court's award of legal custody to father was supported by a preponderance of the evidence and was not against the manifest weight of the evidence. The decision was in the best interest of the child and was not an abuse of discretion.

110491 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.L.C., ET AL.

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, A.J., and Sean C. Gallagher, J., concur.

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

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(Case 110491 continued)

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.