

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 18, 2021

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Affirmed.

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

KEY WORDS: *Former R.C. 2953.31; former R.C. 2953.32; expungement; finding of facts and conclusions of law; hearing.*

Where it is apparent from the record that an applicant is not eligible to have their record expunged, the trial court is permitted to deny the petition without holding a hearing or making findings of fact and conclusions of law. A prerequisite for a hearing on expungement is a determination that an applicant is eligible.

109979	COMMON PLEAS COURT STATE OF OHIO v MICHAEL T. BROWN	A	CRIMINAL C.P.
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Reversed.

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Sierah's Law; violent offender database; R.C. 2903.41-2903.44; notice; retroactive application; principal offender; double jeopardy; separation-of-powers doctrine.*

Trial court erred in granting defendant's motion to vacate violent offender database enrollment requirements. Under Sierah's Law, R.C. 2903.41-2903.44, violent offender database enrollment requirements are mandatory for violent offenders who are principal offenders. Defendant did not establish that Sierah's Law was unconstitutionally retroactive or that it violated constitutional prohibitions against double jeopardy or the separation-of-powers doctrine.

CASE DECISION LIST

110060 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
THOMAS BOHAN, ET AL. v MCDONALD HOPKINS, LLC, ET AL.

Affirmed.

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

KEY WORDS: *Legal malpractice; attorney-client relationship; express; by implication; corporate representation; individual representation.*

Trial court properly granted summary judgment in favor of defendant attorney and his law firm on plaintiffs' legal malpractice claims where there was no evidence of an attorney-client relationship relative to the transaction in which plaintiffs claim they were harmed.

110260 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
NANCY B. SHARP v CITY OF SHAKER HEIGHTS

Affirmed.

Lisa B. Forbes, J., and Michelle J. Sheehan, J., concur; Frank D. Celebrezze, Jr., P.J., concurs in judgment only with separate opinion.

KEY WORDS: *Summary judgment; negligence.*

Plaintiff presented no evidence that defendant had actual or constructive notice of a protruding metal piece of a sign post that was left in the sidewalk. The trial court did not err by granting summary judgment to defendant on plaintiff's negligence claim.

110289 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JERRELL COLLINS

Affirmed.

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

KEY WORDS: *Felony sentencing; consecutive sentences; R.C. 2953.08(G)(2); findings; R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I); contrary to law.*

We review felony sentences under the standard of review set forth in R.C. 2953.08(G)(2). Under R.C. 2953.08(G)(2), an appellate court may increase, reduce, or otherwise modify a sentence, or vacate a sentence and remand for resentencing if it "clearly and

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convincingly finds” that the record does not support the sentencing court’s findings under R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law.

Appellant argues that the trial court’s imposition of a consecutive sentence is not supported by the record. However, our review indicates that the trial court engaged in the proper analysis, as required by R.C. 2929.14(C)(4), and the record contains evidence to support the trial court’s findings.

Specifically, after detailing the litany of offenses in Collins’ criminal history, the trial court made the findings that it was imposing consecutive sentences “to protect the public from future crime, and that [consecutive sentences are] not disproportionate to the seriousness of [Collins’] conduct, and the danger [Collins poses] to the public through [his] numerous arrests.” R.C. 2929.14(C)(4). The trial court also found that Collins was under a sanction for a prior offense when at least one of the cases was committed. In addition to making the finding under R.C. 2929.14(C)(4)(a), the trial court also found, pursuant to R.C. 2929.14(C)(4)(c), that consecutive sentences were necessary based on Collins’ criminal history.

Here, it is clear that the trial court complied with the statute for imposing consecutive sentences and engaged in the proper analysis. Upon review, we find that the record clearly and convincingly supports the trial court’s findings under R.C. 2929.14(C)(4).

110292 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.B., ET AL.

Affirmed.

Sean C. Gallagher, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Legal custody; parenting; case plan services; R.C. 2151.353; temporary custody; continuing jurisdiction; disposition; best interest; children; permanent custody; law of the case; res judicata; preponderance of the evidence; discretion; manifest weight; evidence; Juv.R. 34(B)(2); R.C. 2151.35(B)(2); abuse of discretion.*

Neither res judicata, collateral estoppel, nor the law of the case precluded the juvenile court from rendering a disposition of legal custody following the reversal of a disposition of permanent custody to the agency. The juvenile court acted within its discretion in determining a disposition of legal custody is in the best interest of each child as supported by a preponderance of the evidence, and its decisions were not against the manifest weight of the evidence. The juvenile court was permitted to consider all material and relevant evidence in rendering its disposition. Nothing in the record shows that the juvenile court relied on improper evidence, no abuse of discretion occurred, and no material prejudice was shown.

CASE DECISION LIST

110314 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MANUEL RIEMER

Affirmed.

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Purposes and principles of felony sentencing; R.C. 2929.11; seriousness and recidivism factors; R.C. 2929.12.*

The trial court properly considered the statutory principles and factors of R.C. 2929.11 and 2929.12 when it sentenced defendant to a five-year community control sanction. The trial court was not required to make findings or give reasons supporting the statutory factors when it imposed defendant's sentence.

110348 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KATHERINE LEEDS F.K.A. KATHERINE MERHULIK v WELTMAN, WEINBERG, & REIS CO., LPA

Affirmed.

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

KEY WORDS: *Summary judgment; rebuttal expert report; affidavits of undisclosed witnesses; Civ.R. 52; newly filed evidence; economic necessity; reduction in force; disparate-treatment age discrimination; disparate-impact age discrimination.*

Trial court did not err in granting summary judgment to defendant-employer on discharged employee-plaintiff's disparate-treatment and disparate-impact age discrimination claims where the plaintiff did not demonstrate a prima facie case of age discrimination because she did not show she was replaced by a substantially younger person or that similarly situated employees were treated differently, and did not provide a statistically relevant analysis to show that the reduction in force caused an adverse impact on employees over 40. The trial court did not abuse its discretion in striking the plaintiff's untimely filed rebuttal expert report and the affidavits of undisclosed witnesses; and it did not abuse its discretion in striking evidence filed with the plaintiff's inappropriately filed Civ.R. 52 motion for findings of fact and conclusions of law.

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110361 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE EX REL. OHIO ATTORNEY GENERAL v ROLANDO PETERSON, ET AL.

110386 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE EX REL. OHIO ATTORNEY GENERAL v ROLANDO PETERSON, ET AL.

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., J., and Lisa B. Forbes, J., concur.

KEY WORDS: *R.C. 9.39; public officials; strict liability; R.C. 2305.11(A); penalty; statute of limitations; laches; Civ.R. 56; summary judgment.*

The one-year statute of limitations in R.C. 2305.11(A) does not apply against the state's R.C. 9.39 claim for public official strict liability. R.C. 9.39 does not impose a penalty within the meaning of R.C. 2305.11(A), and R.C. 2305.11(A) is a generally worded statute of limitations that does not apply to the state. The trial court erred in granting the defendant's motion for summary judgment based on the statute of limitations. The trial court did not abuse its discretion in finding that the doctrine of laches does not apply against the state's claim in this case.

110474 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EUGENE GRIFFIN

110475 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EUGENE GRIFFIN

110476 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EUGENE GRIFFIN

Vacated and remanded.

Mary J. Boyle, A.J., Sean C. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Crim.R. 52(B); plain error; R.C. 2929.144; Reagan Tokes Act; qualifying felony; indefinite prison term.*

The trial court committed plain error under Crim.R. 52(B) when it imposed an indefinite prison term on defendant because none of the offenses to which defendant pled guilty was a qualifying felony as defined by R.C. 2929.144.

CASE DECISION LIST

110504 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: KA.R., ET AL.

Affirmed.

Emanuella D. Groves, J., Frank D. Celebrezze, Jr., P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Permanent custody; dependency; best interest of the child; juvenile court; manifest weight.*

Juvenile court did not err in granting permanent custody to Division of Children and Family Services where children had been in custody over two years and Mother had not made significant progress on case plan. Juvenile court was not required to grant request for extension of temporary custody where there was no evidence that extension would be in best interest of children and children's stability could be achieved with placement with children services.

110541 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: R.A., ET AL.

Affirmed.

Anita Laster Mays, P.J., Frank D. Celebrezze, Jr., J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Juv.R. 40(D), failure to object to magistrate's decision; plain error analysis; R.C. 2151.353(G); expiration of temporary custody orders; R.C. 2151.415(D); extension of temporary custody orders; R.C. 2151.414; permanent custody; best interest of the child.*

The juvenile court's termination of parental rights and award of permanent custody to the agency is supported by clear and convincing evidence in the record. A party may not assign as error on appeal the juvenile court's adoption of any legal conclusions or findings of fact where the party has failed to object to the legal conclusions or findings of fact. No objections were filed in this case. There was no error, plain or otherwise, in the trial court's decision.