

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 4

November 24, 2021

110168 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DANYETTE CALDWELL v CUSTOM CRAFT BUILDERS, INC., ET AL.

Vacated and remanded.

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

KEY WORDS: *Arbitration; discovery; requests for admissions; admitted; timely; service; de novo; abuse of discretion; merits; attorney fees; consumer; contract; prejudice.*

The trial court abused its discretion by denying the defendants' motion to amend or withdraw their discovery admissions. The defendants have demonstrated that withdrawal or amendment of the admissions would assist in justly resolving this action on its merits, and conversely, the trial court's denial of its motion effectively prevented the defendants from having the case resolved on the merits.

110374 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SMS FINANCIAL XXVI, LLC v THE WAXMAN CHABAD CENTER, ET AL.

110376 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SMS FINANCIAL XXVI, LLC v THE WAXMAN CHABAD CENTER, ET AL.

Affirmed.

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

KEY WORDS: *Civ.R. 56(C)/summary judgment; Standing; Uniform Commercial Code; App.R. 12(A)/mootness of remaining assignments of error; R.C. 1303.38/possession of instrument; R.C. 1303.31(a)/person entitled to enforce; lost note; allonge; prejudicial error; commercial guarantees; Civ.R. 8(C)/affirmative defenses; mortgage doctrine of equitable subrogation; Civ.R. 15(A)/motion for leave to amend the complaint; doctrine of res judicata.*

Appellees sufficiently pled their defenses and it was not error where the trial court found that appellees did not waive their affirmative defenses.

Appellant's argument that the trial court erred in determining that this court had not rendered judgment in its prior case had no merit where, in a prior appeal, one assignment of error was dispositive of the remaining nine assignments of error. The remaining nine assignments of error, which challenged the court's grant of summary judgment, were moot but that finding did not overturn the trial court's judgment.

(Case 110376 continued)

In its prior case, appellant failed to show that appellant was in possession of the original notes at the time the complaint was filed. The amendment to R.C. 1308.38 does not apply retroactively. In the instant case, appellant failed to attach the proper allonges to the copy of the notes. The trial court's grant of summary judgment as to the notes was proper, and the trial court did not err in its finding that appellant was unable to enforce the notes.

Appellant is unable to enforce the note and is therefore unable to enforce the obligation it secures - the mortgage. Likewise, appellant is not the party entitled to enforce the notes and therefore is not a party to the guarantees and not entitled to enforce the guarantees securing the notes.

Appellant, unable to enforce the notes, is not entitled to an equitable mortgage; appellant did not plead mistake. The trial court's finding that equitable subrogation does not apply was proper.

Appellant filed its motion to amend the complaint more than a year after the original complaint was filed and was only done so after summary judgment had been granted in appellees' favor. It was not an abuse of discretion where the trial court denied appellant's motion for leave to amend the complaint.

Appellant was not deprived of a full opportunity to litigate its claims or issues in this case. A final judgment was granted in the prior case of this consolidated appeal; both cases involved the same parties; the claims litigated in this case were litigated in the prior case; and both cases shared the same operative facts. The trial court did not err when it granted appellees' motion for summary judgment on the grounds of res judicata.

110412	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ALAN JONES			

Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Jail-time credit; community control violation; concurrent sentence.*

The trial court's decision not awarding jail-time credit is affirmed. Appellant argues that the trial court improperly denied him jail-time credit for the days he was held in Cuyahoga County Jail awaiting the disposition of a drug case. The argument lacks merit because appellant was serving time for an unrelated community control violation matter during the pretrial detention in the instant drug case.

CASE DECISION LIST

110416 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PATRICK X. KENNEDY v GEORGE J. STADTLANDER, ET AL.

Reversed and remanded.

Sean C. Gallagher, J., Mary J. Boyle, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Arbitration; contract; agreement; claims; compel; stay; de novo; amendment; subsequent; independent; court of law; complete agreement.*

Reversed the trial court's decision granting motions to compel arbitration and to stay the case pending arbitration, and remanded the case for further proceedings. An arbitration clause in an operating agreement executed by the parties did not apply to claims governed by a subsequent stock option agreement that did not include an arbitration clause and provided a right to bring claims arising thereunder in a court of law. Although the Operating Agreement was amended and appellant agreed to be bound by and subject to its terms, the Stock Option Agreement was an independent and complete agreement and was never amended or modified to include any dispute resolution provision or arbitration clause. The appellant did not agree to submit any claims alleged in the complaint to arbitration and could not be compelled to submit to arbitration.

110423 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICKY BISHOP

Reversed and remanded.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Crim.R. 36; nunc pro tunc entry; jurisdiction to correct sentence.*

The trial court sentenced defendant to an 18-month prison sentence in open court, but the journal entry reflecting the sentence stated the court imposed an 8-month prison sentence. After defendant fully served the 8-month sentence, as allowed by Crim.R. 36, the trial court filed a nunc pro tunc entry to correct the error in the term of the sentence. Defendant moved the trial court to vacate the nunc pro tunc entry, which motion was denied. Because the trial court was without jurisdiction to modify defendant's sentence after the defendant fully served the sentence in the original sentencing entry, the judgment of the trial court denying the motion to vacate the nunc pro tunc is reversed.

CASE DECISION LIST

110431 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FULL SPECTRUM INVESTMENTS, LLC v
VICTORY MARKETING AND CONSULTANT, INC., ET AL.

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Frivolous conduct; R.C. 2323.51; Civ.R. 11.*

It cannot be concluded that the appellee or its counsel of record engaged in frivolous or willful misconduct based on the filing of a motion to vacate a dismissal. Appellee believed dismissal was in error based on the appellants' failure to timely tender settlement payments according to the terms of the settlement agreement.

110506 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: D.B.

110553 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: D.B.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.414(B)(1)(a); best interest of the child.*

The trial court's decision granting permanent custody of the child is affirmed. The trial court's finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent is supported by clear and convincing evidence. Father argues that his efforts to comply with the case plan were hampered by the Covid-19 pandemic, specifically, the virtual visitation lacked the quality of face-to-face interactions and his ability to find housing was hindered by the pandemic. Undoubtedly, the pandemic presented a great challenge to the parents and may have affected their ability to complete their case plan. However, our review of the transcript reflects that the trial court was cognizant of the impact of the pandemic and took it into consideration when granting permanent custody.