

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 24, 2022

110155 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JERMELL MOORE

Reversed and remanded.

Emanuella D. Groves, J., Mary J. Boyle, P.J., Eileen A. Gallagher, J., concur.

KEY WORDS: *Statute-of-limitations, ineffective assistance of counsel, reasonable diligence, motion to dismiss, guilty plea.*

When a defendant pleads guilty, he waives certain defenses, including challenges to the statute of limitations. However, he may still challenge the convictions if he can establish that he received ineffective assistance of counsel, and that counsel's error(s) were such that they rendered his plea infirm. In the instant case, the state filed a John Doe-DNA indictment a week prior to the statute of limitations expiring. Three years later the defendant was identified via DNA match. However, whereas here, the record reflects that the defendant was knowable prior to the expiration of the statute of limitations, there is a legitimate question as to whether the state used reasonable diligence in establishing the defendant's identity. Because the state bears the burden of proving that a prosecution was commenced within the statute of limitations, there was a reasonable probability that a motion to dismiss based on the statute-of-limitations would have been granted based on the facts of this case. Therefore, counsel was ineffective for failing to file a motion to dismiss based on the statute-of-limitations. Additionally, because the record reflects that the defendant would have likely withdrawn his plea and demanded his counsel proceed with trying the case, the convictions must be reversed.

110163 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY E. JOHNSON

110228 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY JOHNSON

Reversed and remanded.

Mary Eileen Kilbane, J., and Anita Laster Mays, P.J., concur; Kathleen Ann Keough, J., dissents (without separate opinion).

KEY WORDS: *Crim.R. 33; motion for leave; motion for new trial; DNA evidence; missing evidence; eyewitness identification; unavoidably prevented; abuse of discretion.*

The trial court's denial of appellant's motion for leave to file a motion for new trial was unreasonable.

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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; R.C. 2947.23(C); court costs; successive motions.*

Trial court's judgment denying motion to vacate court costs is affirmed even though trial courts retain jurisdiction under R.C. 2947.23(C) to modify costs where the defendant filed successive motions requesting the same relief.

110420 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BROADWAY CONCRETE INVESTMENTS, LLC v MASONRY CONTRACTING CORP., ET AL.

Affirmed in part; reversed and remanded in part.

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

KEY WORDS: *Prompt Payment Act; R.C. 4113.61; interest; attorney fees; breach of contract; mechanic's lien bond.*

Trial court's judgment finding that appellant had violated Ohio's Prompt Payment Act set forth in R.C. 4113.61 and awarding interest and attorney fees for the violation reversed because the trial court improperly found that appellant was prepaid for appellee's work and that the statute therefore required appellant to pay the appellee within ten days of receipt of appellee's invoices, rather than ten days after payment from the upper tier contractor; trial court's judgment that appellant breached the contract between appellant and appellee reversed because the trial court based its judgment on terms that were not part of the contract; trial court's judgment that surety company was liable on a surety bond for any part of the judgment rendered against the subcontractor was affirmed because neither the surety company nor the subcontractor challenged the underlying mechanic's lien at trial, thereby waiving any challenge on appeal.

110471 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T.D.S.

Affirmed.

Sean C. Gallagher, A.J., and Mary J. Boyle, J., concur; Eileen T. Gallagher, J., concurs in judgment

only.

KEY WORDS: *Competency to stand trial; R.C. 2152.56; suppression of confession; self-incrimination; weight of the evidence; ineffective assistance of counsel.*

The trial court did not err in resolving the experts' competing conclusions on the juvenile's competency or by finding the juvenile's confession following the Miranda advisement to be admissible. In addition, the convictions were not against the weight of the evidence based on the arguments presented nor a product of trial counsel rendering ineffective assistance.

110536 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
SOPHIA POWELL, ET AL. v ERIC BRANDON WILLIAMS, ET AL.

Affirmed.

Kathleen Ann Keough, J., and Frank D. Celebrezze, Jr., P.J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion).

KEY WORDS: *Will contest; jurisdiction; standing; parentage action; R.C. 3111.04; R.C. 3111.05; statute of limitations.*

Probate court properly dismissed appellants' will contest action because appellants lacked standing. Appellants were unable to bring a parentage action pursuant to R.C. 3111.04 because the statute of limitations to bring such action expired. Any argument regarding the constitutionality of R.C. 3111.04 and 3111.05 was waived because it was not argued with the trial court.

110590 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
JOHN DOE 1 v CUYAHOGA COUNTY COMMUNITY COLLEGE, ET AL.

Affirmed.

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

KEY WORDS: *Civ.R. 12(B)(6); motion to dismiss; governmental immunity; R.C. 2744.01 et seq.; wanton or reckless conduct.*

Trial court properly denied motion to dismiss claims of wanton or reckless conduct against college administrators, who were political-subdivision employees, where the complaint alleged facts that at least one of the administrators knew that a teacher posed a threat of harm to students when they hired the teacher.

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110705 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN THE MATTER OF THE ADOPTION OF D.W-E.H.

Affirmed.

Cornelius J. O'Sullivan, Jr., J.; Michelle J. Sheehan, J., concurs; Kathleen Ann Keough, P.J., dissents (with separate opinion attached).

KEY WORDS: *Adoption; failure to contact; justifiable cause; parental consent; objection to adoption; R.C. 3107.07(A); clear and convincing evidence; manifest weight of the evidence; noncustodial parent's communication with child; Covid-19 pandemic; relationship of the parties; custodial parent's interference with noncustodial parent's communication with child; new issue on appeal waived.*

The probate court had sufficient evidence to determine that the noncustodial parent had justifiable cause for his failure to have contact with the child for the year preceding the filing of the adoption petition. The court was not restricted to focusing solely on the one-year period in making its justifiable cause determination. The court properly considered factors other than the noncustodial parent's communication with the child. Typically, a noncustodial parent has justifiable cause for noncommunication if the custodial parent has created substantial impairments to the communication, but other circumstances can create justifiable cause. Justifiable cause is not precise. Petitioners have the burden to establish that there was no justifiable cause for the noncustodial parent's failure to contact the child. The burden does not shift to the noncustodial parent. The novelty of the global Covid-19 pandemic, the noncustodial parent's medical conditions, loss of work and transportation, exhaustion of resources, and other factors demonstrated that the trial court's justifiable cause finding was supported by some competent and credible evidence. Petitioner failed to raise the issue of the timeliness of the noncustodial parent's objection to the adoption petition at the trial-court level and has waived appellate review of the issue.

110789 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: L.G., ET AL.

Affirmed.

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

KEY WORDS: *Complaint for permanent custody; R.C. 2151.353(A)(4); reasonable-efforts determination; R.C. 2151.419; clear and convincing evidence.*

Juvenile court's finding that agency made reasonable efforts to reunify mother with her children was supported by clear and

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convincing evidence and was not against the manifest weight of the evidence. The record showed that agency had implemented a workable case plan that included mental-health and substance-abuse services to address concerns with mother's ability to provide a safe and stable environment for the children.

110793 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.S.

110795 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: E.S.

Reversed and remanded.

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

KEY WORDS: Parenting time; visitation; neglect; legal custody; residual parent; best interests; hearing; abuse of discretion.

The juvenile court abused its discretion by dismissing a noncustodial parent's motion for parenting time absent a hearing and without considering the best interests of the children.