

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 13, 2022

109821 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ERIC YATES

Affirmed.

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

KEY WORDS: *Sufficiency and manifest weight of the evidence; Evid.R. 801; hearsay; Evid.R. 803(2); excited utterance; Evid.R. 803(3); present sense impression; ineffective assistance of counsel; jury irregularities; R.C. 2945.71; speedy trial.*

Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Reviewed for plain error, the witness's statement to the victim's mother made immediately after the shooting qualified as an excited utterance and present sense impression to the hearsay rule. Appellant's claim of ineffective assistance of counsel fails where the errors complained of were found to lack merit.

109913 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
METROHEALTH SYSTEM v ANJAY KHANDELWAL, M.D., ET AL.

Affirmed.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Preliminary injunction; modification; noncompete agreement; doctor; specialized; abuse of discretion; likelihood of success on the merits; irreparable injury; unjustifiable harm to third parties; public interest; reasonable; legitimate business interest; undue hardship; injury to the public.*

The trial court did not abuse its discretion when it modified the noncompete agreement between appellant and appellee. Appellant did not have a substantial likelihood of success on the merits of its breach-of-contract claim against the appellee with the noncompete agreement as written; however it did have a substantial likelihood of success under the trial court's modified noncompete agreement. As modified by the court, the noncompete agreement protected appellant's legitimate business interests, did not impose an undue burden on the appellee, and did not injure the public. Further, the modified noncompete agreement would not cause the appellant to suffer irreparable injury. Finally, third parties would be harmed, and the public interest would not be served by enforcing the noncompete agreement as written by appellant. Accordingly, the trial court did not abuse its discretion when it modified the noncompete agreement between the parties.

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110205 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v EDWARDLEE JOHNSON

Affirmed.

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

KEY WORDS: *Postconviction relief; R.C. 2953.21; R.C. 2953.23; untimely; exception; unavoidably prevented from discovering; witness testimony; de novo.*

The trial court did not err by denying appellant's petition for postconviction relief because it was untimely pursuant to R.C. 2953.21. Additionally, appellant did not qualify for an exception to the timeliness requirement pursuant to R.C. 2953.23 because he did not demonstrate that he was unavoidably prevented from discovering the facts upon which he relies, nor did he establish by clear and convincing evidence that no reasonable factfinder would have found him guilty but for the alleged constitutional error. Accordingly, the trial court was without jurisdiction to entertain appellant's petition.

110280 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
METRON NUTRACEUTICALS, LLC v CLAYTON THOMAS, ET AL.

Affirmed.

Kathleen Ann Keough, J., and Eileen T. Gallagher, J., concur; Mary J. Boyle, P.J., dissents with separate opinion.

KEY WORDS: *Motion to show cause; contempt; sanction; manifest weight of the evidence; abuse of discretion; attorney fees.*

Trial court's judgment granting motion to show cause and finding defendant in contempt was neither against the manifest weight of the evidence nor an abuse of discretion where the evidence presented at the evidentiary hearing on the motion was undisputed that defendant had not complied with the agreed judgment entry; plaintiff's request for attorney fees was properly submitted with its post-hearing brief; trial court's decision granting attorney fees without an evidentiary hearing did not violate defendant's due process rights because defendant offered no evidence challenging plaintiff's entitlement to attorney fees nor the reasonableness of the fees and never requested a hearing.

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110328 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FREDERICK W. MYERS v JOHN A. HUDEC CLEVELAND DENTAL CENTER, INC., ET AL.

Affirmed.

Anita Laster Mays, J., and Sean C. Gallagher, A.J., concur; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: *Summary judgment; expert testimony; Loc.R. 21.1; Civ.R. 26(B)(7).*

The trial court did not err in granting the appellees' summary judgment motion because the appellant failed to provide expert testimony in compliance with Loc.R. 21.1 and Civ.R. 26(B)(7).

110347 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ERIC JOHNSON

Affirmed.

Mary Eileen Kilbane, J., and Kathleen Ann Keough, P.J., concur; Emanuella D. Groves, J., dissents with a separate opinion.

KEY WORDS: *Petition for postconviction relief; recantation; successive; untimely; abuse of discretion.*

The trial court did not abuse its discretion in denying appellant's successive and untimely petition for postconviction relief, based on an alleged recantation of witness testimony, because appellant was unable to show that he was unavoidably prevented from discovering the recantation and unable to establish a constitutional error.

110358 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JERMAINE ROBINSON

Affirmed.

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

KEY WORDS: *Guilty plea; immigration consequences of a guilty plea; findings of fact and conclusions of law; ineffective assistance of counsel.*

Appellant failed to timely appeal the trial court's denial of his motion to withdraw the guilty plea because there is no authority allowing the 30-day appeal time from a judgment denying a Crim.R.

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32.1 motion to be tolled by a motion for factual findings and conclusions of law. Even if the appeal had been filed timely, the trial court did not abuse its discretion in denying the appellant's motion to withdraw the guilty plea predicated on a claim of ineffective assistance of counsel regarding the immigration consequences of his guilty plea. The totality of circumstances did not establish a reasonable probability that, but for counsel's allegedly deficient performance, appellant would have chosen to go to trial.

110382 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ADRIANA MUNDY v MATTHEW GOLIGHTLY

Affirmed.

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

KEY WORDS: Partition; Civ.R. 12(C); pleading requirements.

In an action for partition of property acquired during cohabitation, judgment on the pleadings pursuant to Civ.R. 12(C) was properly granted where plaintiff did not allege any fact other than cohabitation to establish that defendant had an ownership interest in the property because Ohio law precludes an action for partition of personal property acquired solely on account of cohabitation.

110421 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KRISTOPHER LUCAS

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: Postrelease-control sanctions; jail-time credit.

The trial court erred by failing to reduce the postrelease-control sanction because the sanction should have been reduced by the prison term that was imposed by the parole board. The trial court did not err by not awarding the appellant jail-time credit because the court's calculation shall not include the number of days, if any, that the appellant served in the custody of the department of rehabilitation and correction arising out of any prior offense for which the appellant was convicted and sentenced.

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110448 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JUSTIN P. LEWIS

Affirmed.

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

KEY WORDS: *Crim.R. 32.1; motion to withdraw guilty plea; abuse of discretion.*

The trial court did not abuse its discretion by denying the appellant's motion to withdraw his guilty plea because Crim.R. 32.1 did not vest jurisdiction in the trial court to consider the appellant's motion after an appeal and affirmance by the appellate court.

110449 BEDFORD MUNI. C CRIMINAL MUNI. & CITY
VILLAGE OF WOODMERE v JOSEPH M. WORKMAN

Reversed and vacated.

Sean C. Gallagher, A.J.; Mary J. Boyle, P.J., concurs in judgment only, and Mary Eileen Kilbane, J., concurs in judgment only.

KEY WORDS: *Disorderly conduct; R.C. 2917.11(A); noise ordinance; free speech; First Amendment; selective prosecution.*

Defendant's convictions for disorderly conduct under R.C. 2917.11(A) and a violation of a local noise control ordinance were impermissibly based on the defendant's speech in violation of the First Amendment of the federal Constitution, and therefore, the convictions are vacated.

110456 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM ANGEL

Affirmed.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Third-degree felony; R.C. 2953.08(G)(2); R.C. 2929.11; R.C. 2929.12; 30-month prison term.*

Defendant's sentence of 30 months in prison was not contrary to law because it was within the statutory range for third-degree felonies and the trial court properly considered the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12 when it imposed the

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sentence. Appellate court could not consider defendant's argument that the record did not support the trial court's findings under R.C. 2929.11 and 2929.12 because nothing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence and substitute its judgment for that of the trial court regarding R.C. 2929.11 and 2929.12.

110523 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ETIENNE HAGLER

Affirmed.

Lisa B. Forbes, J., Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Pro se litigant; Crim.R. 32(B); final appealable order; judgment of conviction.

The trial court's denials of defendant's motions for a final order are affirmed. Defendant's argument that the judgments of conviction in multiple cases be condensed to one document is unsupported by law.

110687 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEVIN R. CISCO

Vacated and remanded.

Michelle J. Sheehan, J., Mary J. Boyle, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Notice of consequences of violation of community control sanction; final judgment.

On July 15, 2021, one month after it journalized a community control sanction as sentence for a felony offense, the trial court journalized an entry containing notice of a potential prison sentence it could impose for a violation of the community control sanction. Because the trial court did not have authority to amend the final judgment of sentence, the case is remanded to the trial court to vacate the July 15, 2021 journal entry.

110766 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
YOLANDA DICARLO v FAIRVIEW HOSPITAL, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., P.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Summary judgment; Civ.R. 56; negligence; duty; breach; hazard; notice; slip and fall; premises liability; invitee.

The trial court properly granted defendants' motion for summary judgment. Appellant failed to demonstrate the existence of a genuine issue of material fact that precluded summary judgment in defendants' favor. Appellant did not present any Civ.R. 56(C) evidence demonstrating that a hazard existed and that the hazard caused her to slip and fall. Accordingly, appellant's negligence claim fails as a matter of law.