

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 20, 2022

109777 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RIDGE-PLEASANT VALLEY INC. v HENRY NAVIN

Affirmed.

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

KEY WORDS: *Civ.R. 56, summary judgment, Civ.R. 12(F), strike pleadings.*

The trial court properly granted summary judgment in favor of appellee. The trial court struck pleadings by appellant that failed to comply with the Ohio Rules of Civil Procedure, and appellant did not resubmit filings that complied with the rules though warned to do so.

110038 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
OHIO BAR LIABILITY INSURANCE COMPANY v JASON D. WALLACE, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., P.J., and Eileen T. Gallagher, J., concur; Mary Eileen Kilbane, J., dissents with separate opinion.

KEY WORDS: *Judgment on the pleadings; Civ.R. 12(C); de novo review; insurance policy; contract interpretation; coverage; exclusion; duty to defend; claim for attorney fees; statute designed to deter frivolous conduct; IDEA; 20 U.S.C. 1415(i)(3).*

There was no coverage for appellants' claims under the policy because the claims against appellants in the subject suits were brought under IDEA's fee-shifting provision, which is a statute that was designed to deter frivolous conduct by attorneys engaged in litigation. The trial court did not err in granting judgment on the pleadings on OBLIC's complaint in favor of OBLIC and denying appellants' corresponding motion. The trial court further did not err in granting summary judgment in favor of OBLIC on appellants' counterclaim for bad faith.

110050 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARCUS BRANCH

Affirmed.

Emanuella D. Groves, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Maximum sentence, findings of fact, R.C. 2929.141, abuse of discretion, psychological evaluation.*

A trial court is not required to place findings of fact and conclusions of law on the record when imposing a maximum sentence where the trial court on the record and in its journal entry notes that it considered the required factors. The mere fact that the trial court emphasized certain facts and did not mention others, does not mean the trial court failed to consider relevant factors.

Appellate court may only review the record before it. Where the record is silent as to an issue argued by appellant, the court is unable to review it.

Finally, a trial court does not abuse its discretion when it fails to order a second psychological evaluation when the first psychological evaluation suggests appellant is malingering and appellant’s multiple pro se filings and colloquy with the court display appellant’s understanding of the proceedings and his ability to assist his attorney.

110107	BEREA MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF OLMSTED TOWNSHIP v CHAD B. RITCHIE			

110108	BEREA MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF OLMSTED TOWNSHIP v CHAD B. RITCHIE			

Modified; remanded.

Sean C. Gallagher, A.J., and Eileen A. Gallagher, J., concur; Lisa B. Forbes, J., dissents with separate opinion.

KEY WORDS: *Magistrate’s decision; objection; de novo; R.C. 2929.41(B)(1); R.C. 2929.24; R.C. 2929.25; R.C. 2929.25(A)(1)(a); R.C. 2929.25(D); misdemeanor; sentence; aggregate term; modify; suspend; maximum jail term; community control; violation; matter of law.*

Trial court’s order modifying the defendant’s misdemeanor sentence was modified to delete language indicating additional jail time remained available for sentencing, which was erroneous as a matter of law. The trial court sentenced the defendant pursuant to R.C. 2929.24(A) and 2929.25(A)(1)(a) to a jail term of 30 days for each misdemeanor count in combination with the direct imposition of five years of community control. Because the defendant was credited with the total jail time on the sentence that was imposed, he was not subject to any further jail time. R.C. 2929.25(D) could not be read to permit the trial court to modify the sentence beyond the maximum jail term initially imposed.

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110226 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER LENHART

Affirmed.

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

KEY WORDS: *DNA testing; outcome determinative; res judicata.*

Trial court properly denied defendant's application for DNA testing where the record shows the results of such testing would not be outcome determinative.

110366 LAKEWOOD MUNI. G CIVIL MUNI. & CITY
HUDSON & KEYSE LLC v DENISE L. SHERRILLS

Affirmed.

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

KEY WORDS: *Dormant judgment; motion for revivor; objection; R.C. 2325.15; R.C. 2325.18; App.R. 12; challenge to validity of the judgment; collateral attack.*

The trial court did not err in granting the motion to revive dormant judgment. The collateral attacks on the judgment raised by appellant in her objection were appropriate for a motion for relief from judgment but could not be considered with regard to a motion for revivor.

110555 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY BROWNING

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Felony sentencing; 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); R.C. 2929.11; contrary to law; permissible range.*

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 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

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(Case 110555 continued)

(C)(4), or 2929.20(I), or the sentence is otherwise contrary to law.

Under R.C. 2929.11, a sentence imposed for a felony shall be “reasonably calculated” to achieve “three overriding purposes of felony sentencing” - (1) to protect the public from future crime by the offender and others, (2) to punish the offender, and (3) to promote the effective rehabilitation of the offender - “using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.”

Appellant argues his two-year sentence was contrary to law because it failed to comport with the overriding purposes of felony sentencing set forth in R.C. 2929.11.

However, the two-year sentence for appellant’s conviction, a third-degree felony, was within the permissible range. In addition, the court’s judgment of conviction states that “[t]he court considered all required factors of the law” and “finds that prison is consistent with the purpose of R.C. 2929.11.” Further, although the trial court was not required to make findings on the record under R.C. 2929.11 and 2929.12, the trial court discussed its reasoning at the sentencing hearing. As such, we refuse to find that appellant’s two-year prison sentence is contrary to law.

110729 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: D.P., JR.

Affirmed.

Anita Laster Mays, J., and Michelle J. Sheehan, J., concur; Mary J. Boyle, P.J., concurs in judgment only.

KEY WORDS: Due process; manifest weight of the evidence; permanent custody; R.C. 2151.353; R.C. 2151.414; R.C. 2151.419.

The trial court did not violate Father’s due process rights in finding that clear and convincing evidence supports granting permanent custody of the child to CCDCFS.

110769 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JASON L. BOLGER, JR.

Vacated in part and remanded.

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

KEY WORDS: Jail-time credit; medical isolation; community-control

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sanctions; maximum jail sentence served; R.C. 2929.24; trial court; journal entry; misdemeanor.

The trial court erred when it denied defendant 20 days of jail-time credit for days spent in medical isolation within the county jail. The trial court also erred when it placed defendant on community-control sanctions after he had already served the maximum jail sentence for a misdemeanor.