

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 7, 2022

110618 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MREV ARCHWOOD LLC v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Valuation complaint; R.C. 5717.05; R.C. 5717.03; taxable value; abuse of discretion; de novo; mixed question of law and fact; best evidence of value; real estate appraisal; apartment building; recency; arm's-length transaction; like-kind exchange; 26 U.S.C.S. 1031; administrative appeal.*

Appellant did not show that the common pleas court abused its discretion in weighing the evidence of value and determining that an arm's-length sale price, rather than appellant's appraisal evidence, was the best evidence of value.

110815 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SOLOMON LEWIS

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Mandatory bindover; probable cause; more-than-a-mere-suspicion standard; plain error; due process; R.C. 2953.08(G)(2); clearly and convincingly; R.C. 2929.14(C)(4); imposition of consecutive sentences.*

State presented sufficient credible evidence to support juvenile court's finding that there was probable cause to believe appellant committed acts which would constitute attempted murder and felonious assault to warrant mandatory transfer of the case from the juvenile court to the general division. General division lacked jurisdiction to convict defendant on improperly-discharging-firearm-into-habitation count where juvenile court had previously dismissed an identical charge after finding that there was no probable cause to believe appellant committed the offense.

Ohio's mandatory bindover procedure does not violate due process. Appellate court need not consider appellant's assertion that more-than-a-mere-suspicion standard for determining probable cause is unconstitutional where appellant provided no argument why standard is unconstitutional.

Record did not clearly and convincingly fail to support trial court's findings in support of the imposition of consecutive sentences.

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110946 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v JEREMIAH D. MORTON

Reversed and remanded.

Eileen A. Gallagher, J., and Anita Laster Mays, J., concur; Sean C. Gallagher, A.J., dissents (with separate opinion).

KEY WORDS: *Petition for postconviction relief; findings of fact and conclusions of law; R.C. 2953.21; timeliness requirement; jurisdiction; electronic filing; wrong court.*

Trial court erred in denying defendant's petition for postconviction relief without providing findings of fact and conclusions of law. Petition for postconviction relief was timely filed for purposes of R.C. 2953.21(A) and trial court had jurisdiction to consider petition where petition was captioned for the criminal case and accepted for filing by the clerk of courts but was initially submitted for electronic filing and docketed under the case number for the pending appeal rather than the criminal case number set forth in the caption.

110976 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MARCIA MEEHAN, TRUSTEE AND BENEFICIARY, ET AL. v N. LINDSEY SMITH, ET AL.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Legal malpractice; express attorney-client relationship; implied attorney-client relationship; beneficiary of trust/will; trustee of trust; corporate officer; summary judgment.*

The trial court did not err in granting summary judgment in favor of attorneys. The attorneys did not represent appellant, either expressly or impliedly. The attorneys did not represent appellant individually or in any of her roles as a beneficiary of the subject trusts and will, as a trustee of the trusts, or as a corporate officer. Thus, no attorney-client relationship was formed between appellant and appellees and the trial court properly granted summary judgment in favor of the appellees on appellant's legal malpractice action.

110993 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICKEY TWYMON v EAGLE AUTO PARTS INC., ET AL.

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Reversed, vacated, and remanded.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Motion to vacate default judgment; Civ.R. 55; service; statutory agent; Civ.R. 60(B)(1); excusable neglect; meritorious defense; damages.*

Trial court abused its discretion in denying defendant's motion to vacate default judgment where summons and complaint were served on listed statutory agent but were not forwarded to defendant, listed statutory agent was no longer at service address and did not notify defendant that she no longer intended to serve as its statutory agent, defendant did not receive notice of lawsuit until it was served with default judgment, defendant showed that it had a meritorious defense based on excessive damages awarded to plaintiff in default judgment, and motion for default judgment was filed before defendant's answer was due.

111007 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v D'SHAUN MCNEAR

Affirmed in part, vacated in part, and remanded.

Cornelius J. O'Sullivan, Jr., J., Mary J. Boyle, J., and Michelle J. Sheehan, P.J., concur.

KEY WORDS: *Involuntary manslaughter R.C. 2903.04; aggravated robbery R.C. 2911.01; failure to comply R.C. 2921.331; having weapons while under disability R.C. 2923.13; aggravated vehicular assault R.C. 2903.08; Reagan Tokes Law; ineffective assistance of counsel; consecutive sentences R.C. 2929.14(C)(4); Crim.R. 43; R.C. 4510.02(A)(2); clerical error; sentencing journal entry.*

Appellant's sentence pursuant to Reagan Tokes was constitutional and his trial counsel was not ineffective because counsel objected to his indefinite sentence. Appellant's consecutive sentences were not contrary to law. The trial court erred when it sentenced appellant to a class two lifetime driver's license suspension on a crime that did not qualify for that sentence and via journal entry. The trial court made a clerical error in the sentencing journal entry for both cases that can be corrected via nunc pro tunc entry.

111014 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MARIE FALKENBERG v RACHEL KUCHARCZYK, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Cornelius J. O'Sullivan, Jr., J., and Mary J. Boyle, J., concur.

KEY WORDS: *Collision; negligence; civil trial; manifest weight;*

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(Case 111014 continued)

motion to compel.

The record contained sufficient evidence for the jury to determine whether appellant lost her right of way and whether appellee was negligent in operating her automobile. Weighing the evidence presented in the trial pursuant to the standard set forth in *Eastley v. Volkman* and mindful that every reasonable presumption must be made in favor of the judgment and the finding of facts, we are unable to conclude that the jury, in resolving conflicts in the evidence, clearly lost its way and created a manifest miscarriage of justice warranting a reversal.

111024	COMMON PLEAS COURT	A	Criminal C.P.
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STATE OF OHIO v GREGORY BECKWITH

Affirmed in part, vacated in part.

Mary J. Boyle, J., Mary Eileen Kilbane, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Plain error; R.C. 2903.211(A)(1); menacing by stalking; R.C. 2929.18(A)(1), restitution, R.C. 2929.18(A)(5)(a); reimbursement; R.C. 2947.23(A)(1); costs of prosecution; R.C. 2949.14; extradition costs; indigent defendant.

Vacating an order of restitution for a damaged ankle monitor ordered as a condition of appellant's bond and \$1,890 in extradition costs. Appellant was convicted of menacing by stalking. The damaged ankle monitor was unrelated to that offense. Appellant was declared indigent and could not be ordered to pay extradition costs.

111128	CLEVELAND MUNI.	C	Criminal Muni. & City
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CITY OF CLEVELAND v CHRISTOPHER G. RUDOLPH

Reversed and remanded.

Eileen T. Gallagher, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Marsy's Law; victim's right to direct appeal; restitution; upon request; notice; opportunity to be heard.

Victim's constitutional rights under Marsy's Law were violated when court sentenced defendant in the victim's absence even though the victim requested notice and an opportunity to be heard at all public hearings.

Victim's constitutional rights under Marsy's Law were violated when court declined to order restitution even though victim requested an opportunity to be present to pursue his claim for restitution.

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111209	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v KAYLA L. FREEMAN			

Reversed and remanded.

Sean C. Gallagher, A.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Conceded error; seized property; R.C. Chapter 2981; jurisdiction; dismissed case.

The trial court erred in denying defendant's motion for return of seized property for the want of jurisdiction because the court retains jurisdiction to rule on such a motion following the state's dismissal of the case.