

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 21, 2022

110814 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
THE GUARDIANSHIP OF ISHAMEL MARKS

Affirmed.

Lisa B. Forbes, J.; Sean C. Gallagher, A.J., concurs in judgment only (with separate opinion); and Michelle J. Sheehan, J., concurs in judgment only (with separate opinion).

KEY WORDS: *Guardianship; abuse of discretion; clear and convincing evidence; Evid.R. 602; Evid.R. 701; personal knowledge; R.C. 2111.02(C)(7); rights of the alleged incompetent person.*

The trial court did not abuse its discretion when it awarded guardianship to a professional guardian rather than the ward's mother. The court heard testimony that the alleged incompetent person was diagnosed with autism and had "very high needs." Further, the court heard that he was making progress in his current residential placement and if the mother was awarded guardianship she would remove him from that placement and move him into her home where the ward would not have the benefit of staff, socialization, or access to services that come with a professional guardian.

*Further, the trial court did not err in allowing a representative of the professional guardianship organization to testify within his personal knowledge of his experience as a representative for adults with developmental disabilities.
Judgment affirmed.*

110914 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
BONNIE G. BROMALL, EXECUTOR v SELECT SPECIALTY HOSPITAL - AKRON, LLC, ET AL.

Affirmed.

Eileen T. Gallagher, J.; Sean C. Gallagher, A.J., concurs (with separate concurring opinion attached); Mary Eileen Kilbane, J., dissents (with separate dissenting opinion attached).

KEY WORDS: *Abuse of discretion; hearsay; admission; party opponent; relevant; prejudice; probative; opinion; factual assertion; motion in limine.*

The trial court did not abuse its discretion by granting the appellee's motion in limine and precluding the Estate from introducing a physician's out-of-court statements concerning his opinion of liability at trial.

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110988 PARMA MUNI. G Civil Muni. & City
MICHAEL GELETKA v MICHAEL RADCLIFF

Affirmed.

Anita Laster Mays, J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, A.J., concurs in judgment only (with separate opinion).

KEY WORDS: *Summary judgment; genuine issue of material fact.*

The trial court did not err by granting the appellee's motion for summary judgment, dismissing the appellant's counterclaims, because the appellant has not demonstrated there are any genuine issues of material fact.

111050 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
CITY OF CLEVELAND v COMMUNICATION WORKERS OF AMERICA, LOCAL 4340

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *R.C. Chapter 4117; collective bargaining agreement; State Employee Relations Board; union; grievance; arbitration; fact-finder; unfair labor practice; R.C. 2711.10; arbitration award; rational nexus.*

The trial court did not err when it found that the arbitrator had jurisdiction over the dispute between the city and the union. SERB had already dismissed the union and the city's unfair labor practice charges and the arbitrator's decision that he had jurisdiction over the collective bargaining agreement issues was not unlawful, arbitrary, or capricious.

The trial court did not err when it found that the arbitrator was within his authority to interpret missing essential terms in the collective bargaining agreement; the arbitrator's interpretation was based on contract law and arbitral labor law and did not create an agreement where one did not previously exist. The arbitrator's decision was rationally based upon the terms of the collective bargaining agreement; therefore, the arbitrator did not exceed his powers and the award is not arbitrary, capricious, or unlawful.

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111066 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIAM FIELDS, JR.

Affirmed.

Sean C. Gallagher, A.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Felonious assault; sentence; indefinite prison term; Reagan Tokes Law; constitutional; felony sentence; factors; purposes; R.C. 2929.11; R.C. 2929.12.*

The trial court's imposition of an indefinite sentence for felonious assault was upheld. The appellant's constitutional challenges to the Reagan Tokes Law were overruled. The appellant's sentence was not contrary to law because the prison term imposed by the trial court was within the statutory range and the court considered the purposes of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12.

111084 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
HEATHER GOSS v USA CYCLING, INC., ET AL.

Affirmed.

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

KEY WORDS: *Cycling; release; contract; express assumption of risk; negligence; unambiguous; clear; terms; exculpatory clause; injuries; design; safety; hazards; public policy.*

The trial court did not error by granting summary judgment in favor of the defendants. The only reasonable interpretation of the event release signed by the plaintiff prior to the recreational-sport activity was that it reflected the parties' intent to release the defendants from negligence claims of the nature asserted by plaintiff.

111085 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
A.H. v W.E.H.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Divorce; regularity of proceedings in absence of transcript; non-participation in proceedings; abuse of discretion; competent evidence.*

(Case 111085 continued)

Appellant has failed to make the transcript of the proceedings part of the record and therefore we must presume the regularity of the proceeding. From the record before us, the trial court's findings in the divorce decree did not constitute an abuse of discretion. Rather, they were supported by competent evidence. Appellant refused to participate in some of the proceedings, including trial, and cannot now complain about the court's determinations.

111143 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE J.S., ET AL.

Affirmed.

Mary Eileen Kilbane, J., Sean C. Gallagher, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Objections to magistrate's findings; no transcript or affidavit filed; adoption of magistrate's findings; reviewing court precluded from considering transcript.

Where Mother objected to magistrate's findings but did not file a copy of the transcript or an affidavit, the trial court properly adopted the magistrate's factual findings and the appellate court was precluded from considering the transcript submitted with the appellate record.