

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 4

June 2, 2022

110750 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v LEE JONES

Affirmed.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Sylvia S. Hendon, J.,* concur.

*(Sitting by assignment: Sylvia S. Hendon, J., retired, of the First District Court of Appeals.)

KEY WORDS: *Petition for postconviction relief; res judicata; untimely; R.C. 2953.23(A); exceptions.*

In this matter, appellant's petition for postconviction relief was untimely, having been filed almost 13 years after he pled guilty; none of the exceptions contained in R.C. 2953.23(A) applied; and claims are all barred under the doctrine of res judicata. As such the trial court did not err when it dismissed the petition without conducting an evidentiary hearing. Accordingly, we overrule appellant's two assignments of error.

110751 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v THOMAS WILK

Affirmed in part, vacated in part, and remanded.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Rape; gross sexual imposition; unlawful sexual conduct with a minor; Evid.R. 405; character evidence; sufficiency of the evidence; manifest weight of the evidence; consecutive sentences; R.C. 2971.03; R.C. 2929.14; merger; allied offenses of similar import.*

The trial court did not abuse its discretion by allowing the state to cross-examine defense witnesses regarding appellant's history after the appellant introduced evidence of his good character. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court was not required to conduct an additional merger analysis and appellant failed to demonstrate plain error. The trial court properly imposed consecutive sentences for appellant's rape offenses, but was required to make separate findings with respect to appellant's gross sexual imposition offenses.

CASE DECISION LIST

110892 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DENNIS CASEY, JR. v KARI JONES, ET AL.

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Motion to dismiss; motion for default judgment; negligence; premises liability; negligent infliction of emotional distress.*

The trial court properly dismissed complaint against resident and alleged homeowner where complaint alleged plaintiff was at home for social purposes and was attacked and injured by an intruder. Because plaintiff did not allege facts that indicated resident or homeowner had a duty to control the intruder or that they had a relationship with plaintiff conferring a duty of protection, plaintiff did not assert a claim in negligence or premises liability upon which relief could be granted. Because plaintiff did not assert claims entitling him to relief for his claims based on negligence, he could not maintain a cause of action for negligent infliction of emotion distress, and the trial court did not abuse its discretion by denying the motion for default judgment against alleged homeowner.

110924 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ERIC T. MCNARY

Reversed and remanded.

Anita Laster Mays, P.J., Emanuella D. Groves, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *S.B. 201; Reagan Tokes Law; ripeness, constitutionality.*

Challenges to the constitutionality of S.B. 201 known as the Reagan Tokes Law are ripe for review pursuant to State v. Maddox, Slip Opinion No. 2022-Ohio-764. The trial court's refusal to impose sentence pursuant to the Reagan Tokes Law on the ground that the law is unconstitutional is in error pursuant to this court's en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

CASE DECISION LIST

110955 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.S.

110956 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: Z.G.

Affirmed.

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

KEY WORDS: *Assigned counsel fees; guardian ad litem fees; extraordinary fees; abuse of discretion.*

In this matter, the juvenile court was in the best position to determine whether appellant's request for extraordinary fees was reasonable and warranted. The juvenile court considered the reasons appellant advanced in support of the motions for extraordinary fees, as well as the attached schedule of itemized hours, before concluding that the extraordinary fees were not warranted.

When applying an abuse of discretion standard of review, we are precluded from simply substituting our own judgment for that of the juvenile court. We find no abuse of discretion in the juvenile court's decision. Accordingly, we overrule appellant's assignments of error.

111036 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RNE ENTERPRISES, LLC v IMPERIAL KITCHEN CABINET FACTORY, LLC, ET AL.

Dismissed.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Garnishment; motion to stay execution; supersedeas bond; satisfaction of judgment; moot.*

Where the appellant failed to obtain a supersedeas bond and stay the proceedings, satisfaction of the underlying judgment through garnishment proceedings rendered the appeal moot.

111041 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.A.L.-C.

Affirmed.

Mary J. Boyle, J., Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Temporary custody; neglect; dependent; kinship search; R.C. 2151.4116; hearsay; abuse of discretion; clear and convincing evidence.*

The juvenile court did not abuse its discretion when awarding temporary custody to CCDCFS. The court’s findings were sufficient to justify the adjudication of neglect pursuant to R.C. 2151.03(A)(2) and of dependency pursuant to R.C. 2151.04(C). In juvenile court proceedings, there must be strict adherence to the Rules of Evidence at the adjudicatory stage. Yet, any evidence that is material and relevant, including hearsay, opinion, and documentary evidence, is admissible at the dispositional stage. The erroneous admission of hearsay evidence is harmless if other evidence, apart from the erroneously admitted evidence, proves that which the challenged evidence was offered to prove. R.C. 2151.4116 promotes the placement of children with family members where possible. Here, the child was placed with maternal grandmother. Therefore, the statutory requirements were satisfied.

111111 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ANNETTE GAYLE GIRDLER v PATRICIA D. LIBASSI, ET AL.

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Summary judgment; uneven sidewalk; public sidewalk; Eichorn; affirmative acts; two-inch rule; attendant circumstances; speculation.*

Trial court properly granted summary judgment in favor of landowners on claim that they negligently failed to maintain public sidewalk in safe condition where there was no evidence that they made any affirmative acts to create or maintain a dangerous condition.

111143 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.S., ET AL.

Dismissed.

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

KEY WORDS: *Juv.R. 40(D)(4)(d); timely objections; final, appealable order.*

Where the juvenile court failed to rule on Mother’s timely objections to the magistrate’s decision as required by Juv.R. 40(D)(4)(d), there was no final, appealable order.