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Court of Appeals, Eighth Appellate District

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May 5, 2022

109689 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v PHILLIP SCOTT

Affirmed.

Eileen T. Gallagher, J., and Michelle J. Sheehan, J., concur; Sean C. Gallagher, A.J., concurs (with separate opinion).

KEY WORDS: Consecutive sentences; Reagan Tokes Law.

Consecutive sentences affirmed where trial court's findings are supported by the record.

Indefinite sentence imposed under Reagan Tokes Law is constitutional.

110022 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v STEVEN BOND, JR.

Affirmed.

Eileen T. Gallagher, J., and Kathleen Ann Keough, J., concur; Sean C. Gallagher, A.J., concurs (with separate opinion).

KEY WORDS: Reagan Tokes Law; constitutional; consecutive sentences; aggregate minimum; aggregate maximum; plain error; ineffective assistance of counsel.

Trial court properly ran indefinite prison terms imposed under the Reagan Tokes Law consecutively because they were imposed in two separate cases.

Trial counsel was not ineffective for failing to object to consecutive sentences of indefinite prison terms imposed under the Reagan Tokes Law because they were imposed in two separate cases.

110177 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RAIDA ALLAN v TAREQ ALLAN, ET AL.

110179 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
871 ROCKY RIVER DRIVE, INC. v RAIDA ALLAN, ET AL.

Reversed and remanded.

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

KEY WORDS: *Summary judgment; fraudulent transfer act; transfer; statute of limitations; res judicata; claim preclusion; issue preclusion; default judgment; declaratory judgment action.*

After divorce proceedings concluded, summary judgment was not proper where wife filed complaint under Ohio Fraudulent Transfer Act to void alleged transfers of two businesses made by husband to his brother, transferee, at the time of the divorce. Summary judgment was improperly granted on the basis statute of limitations ran where genuine issues of fact remained as to whether the transfers of businesses occurred, and if they occurred, at what time did they occur. In these circumstances, claims under the Ohio Fraudulent Transfer Act were not prohibited by res judicata, claim preclusion, or issue preclusion. Trial court's denial of default judgment against husband not proper in this case where summary judgment was not properly granted against wife as to claims. Trial court's grant of summary judgment in declaratory judgment action as to the ownership of certain property by one of the businesses was not proper as genuine issues of material fact remained as to the ownership of certain property by one of the businesses.

110234 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BORIS MORRISON v CITY OF WARRENSVILLE HEIGHTS, ET AL.

Affirmed.

Emanuella D. Groves, J., Sean C. Gallagher, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Political subdivision immunity; political subdivision employee immunity; summary judgment; R.C. 2744.03(A)(6); R.C. 2744.02(A).*

Trial court's grant of summary judgment to appellant/cross-appellee City was proper where appellee/cross-appellant failed to establish an exception under R.C. 2744.02(B) that would breach the City's immunity.

Trial court's denial of summary judgment to appellant/cross-appellee City employees was proper where there remained a genuine issue of material fact as to whether their conduct rose to the level of reckless and/or wanton misconduct, thereby breaching immunity under R.C. 2744.03(A)(6).

110295 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LINDA GARMBACK v CITY OF CLEVELAND, OHIO, ET AL.

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Political subdivision immunity; summary judgment; R.C. 2744.02(A); 2744.02(B)(2).*

Trial court erred in denying summary judgment to City for claims of negligence, negligent infliction of emotional distress, and respondeat superior where appellee failed to establish the elements of a negligence claim opening the City to liability. Further, political subdivisions are not liable for the intentional torts of their employees; therefore, the trial court erred in denying summary judgment to appellant on the reckless infliction of emotional distress claim.

However, R.C. 2744.02(A) does not apply to breach-of-contract claims; therefore, the trial court did not err in denying summary judgment as to that issue.

110321 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JULIAN MACHALA v YIFENG XIANG

Affirmed.

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

KEY WORDS: *Summary judgment; negligence; duty; criminal acts.*

Trial court properly granted summary judgment to defendant on plaintiff's negligence claim because defendant had no knowledge about the likelihood of theft in plaintiff's neighborhood and, thus, had no special duty to protect the plaintiff from the criminal acts of third parties.

110518 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
GREGORY SHTEYNGARTS v MALGORZATA SHTEYNGARTS

Affirmed.

Anita Laster Mays, P.J., Lisa B. Forbes, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Civ.R. 60(B); R.C. 3105.171(I); abuse of discretion; motion for relief from judgment; timeliness of motion.*

The trial court did not abuse its discretion in denying appellant's Civ.R. 60(B) motion for relief from judgment because R.C. 3105.171(I) does not permit modification absent the consent of both parties, and Civ.R. 60(B) cannot provide a workaround. The trial court did not abuse its discretion when it found that appellant's motion for relief from judgment pursuant to Civ.R. 60(B)(4) and 60(B)(5) was not filed within a reasonable time. Appellant filed the motion more than three years after the trial court's judgment, and

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absent evidence explaining the delay, we have consistently found delays of four months or less unreasonable under Civ.R. 60(B).

110537 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
KAREN MILLER v DAVID MILLER, ET AL.

Affirmed.

Anita Laster Mays, P.J., Lisa B. Forbes, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Civ.R. 60(B); motion for relief from judgment.

The trial court did not abuse its discretion when it found that appellant's motion for relief from judgment pursuant to Civ.R. 60(B)(5) was not filed within a reasonable time. Appellant filed the motion more than three years after the trial court's judgment and absent evidence explaining the delay, we have consistently found delays of four months or less unreasonable under Civ.R. 60(B).

110549 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOJWAN MARTIN

Reversed and remanded.

Anita Laster Mays, P.J.; Emanuella D. Groves, J., concurs; Michelle J. Sheehan, J., concurs in judgment only with separate opinion.

KEY WORDS: Crim.R. 33; motion for leave to file motion for new trial; newly discovered evidence; reasonable time filing; clear and convincing evidence; res judicata; ineffective assistance of counsel.

Appellant submitted clear and convincing evidence that on its face showed he was unavoidably prevented from discovering the evidence sooner. The assistance of prior postconviction counsel was ineffective and resulted in delays and disciplinary action. Res judicata did not apply. Crim.R. 33(B) does not authorize or support the "creation of a reasonable-time filing requirement" and states only that a defendant must show that he was "unavoidably prevented from the discovery of the evidence upon which he must rely." State v. Bethel, Slip Opinion No. 2022-Ohio-783, ¶ 53, 55.

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110654 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL CIRINO v OHIO BUREAU OF WORKERS' COMPENSATION

Affirmed.

Sean C. Gallagher, A.J., Anita Laster Mays, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Civ.R. 12(B)(1); subject-matter jurisdiction; Court of Claims; common pleas; R.C. 2743.03(A); declaratory; injunctive relief; legal damages; fees; monetary damages; legal relief.*

Affirmed decision of the common pleas court to grant the bureau of workers' compensation's motion to dismiss the action for lack of subject-matter jurisdiction. Although the complaint included claims for declaratory and injunctive relief and no matter how the claims were characterized, because plaintiff's class-action suit against the bureau sought legal damages for an alleged loss resulting from fees collected by the bank, the Court of Claims had exclusive jurisdiction over the action.

110696 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
TIMOTHY WOOD, ET AL. v CASHELMARA CONDOMINIUM UNIT OWNERS ASSOCIATION

Affirmed in part, reversed in part and remanded.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 5311.19; condominium declaration; fiduciary duty; derivative lawsuit; summary judgment.*

The court reversed the trial court's grant of summary judgment to the condominium association on the plaintiffs' claims that the association failed to remediate damage to common areas that in turn damaged their use and enjoyment of their condominium unit. The court found that there was a genuine issue of material fact concerning the timeliness and effectiveness of the remediation measures.

110767 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MATTHEW STRATFORD

Affirmed.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Sufficiency of the evidence; weight of the evidence, bench trial.*

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(Case 110767 continued)

Appellant's conviction for rape was supported by sufficient evidence where the state presented testimony in support of every element of the offense such that if believed it supported the trier of fact's finding of guilt. Appellant's conviction was supported by the greater weight of the evidence, as the trier of fact was permitted to believe all, some, or none of a witness's testimony.

110775	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL P. HERVEY			

Vacated in part and remanded.

Eileen A. Gallagher, J., and Kathleen Ann Keough, P.J., concur; Cornelius J. O'Sullivan, Jr., J., dissents (with separate opinion).

KEY WORDS: Imposition of consecutive sentences; R.C. 2929.14(C)(4); contrary to law; complete proportionality finding.

Imposition of consecutive sentences was contrary to law where trial court failed to make finding at sentencing hearing that consecutive sentences were not disproportionate to the danger defendant poses to the public. Consecutive sentences vacated; case remanded for trial court to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and, if so, to make all of the required findings on the record and to incorporate those findings into its sentencing journal entry.

110828	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ADOLPHUS PHILPOT			

Affirmed.

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

KEY WORDS: Presentence motion to withdraw guilty plea; ineffective assistance of counsel; substitution of counsel; Reagan Tokes Act; objection; constitutionality.

The trial court did not abuse its discretion when it denied defendant's presentence motion to withdraw his guilty plea because defendant was represented by competent counsel, advised of his rights pursuant to Crim.R. 11, given notice and an opportunity to be heard, the trial court gave full and fair consideration to the motion, the motion did not state specific reasons for withdrawal, the defendant understood the nature of the charges and the possible penalties, and defendant failed to demonstrate that perhaps he was not guilty or had a complete defense. The trial court did not abuse its discretion when it denied

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(Case 110828 continued)

defendant's motion for new assigned counsel because defendant did not demonstrate a complete breakdown in communication and how defense counsel's failure to file a sentencing memorandum led to an apparently unjust result. In addition, defense counsel was not ineffective for failing to object to the imposition of a Reagan Tokes sentence because this court recently found the Act to be constitutional. Therefore, defendant cannot show prejudice even if we assume deficient performance.

110846 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL BUTLER, II

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and James A. Brogan, J.,* concur.
(*Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

KEY WORDS: *Crim.R. 11(C)(2); strict compliance; explanation of right to remain silent.*

When accepting a guilty plea to a felony offense, a trial court complies with Crim.R. 11(C)(2) by informing a defendant in a manner that he understands the rights he is waiving. In order to strictly comply with Crim.R. 11(C)(2), a trial court is required to determine that a defendant understands that he cannot be compelled to testify against himself but is not required to further advise a defendant that the state cannot comment on his right not to testify during trial.

110870 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
HARBOUR LIGHT CONDOMINIUM NO. 4 v JEFFREY A. CAVALLO

Reversed and remanded.

Sean C. Gallagher, A.J., Frank Daniel Celebrezze, III, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *R.C. 5311.19(A); reasonable attorney fees; award; condominium association; unit owner; violation; declaration; abuse of discretion; unreasonable; shocks the conscience.*

Trial court's decision to not award reasonable attorney fees authorized by statute, R.C. 5311.19(A), was unreasonable and shocked the conscience of the court where the condominium association had obtained a default judgment against a unit owner who was in violation of the Declaration of Condominium Ownership for causing an annoyance and nuisance and when an affidavit supporting attorney fees and an itemized billing statement were provided. The trial court's decision was reversed, and the case was remanded for a determination of reasonable attorney fees to be awarded.

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110880 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ERIC HAGGINS

Affirmed.

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

KEY WORDS: *Reagan Tokes Law; constitutionality.*

The trial court imposed an indefinite prison sentence pursuant to the Reagan Tokes Law. Appellant's arguments that the Reagan Tokes Law is unconstitutional were overruled in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470. Appellant's sentence is affirmed.

110907 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICARDO BRADFORD

110908 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAY, RICARDO, AKA RICARDO BRADFORD

110909 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICARDO M. BRADFORD

110910 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICARDO BRADFORD

110912 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICARDO BRADFORD

Affirmed.

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

KEY WORDS: *Res judicata; motion for withdrawal of guilty plea; hearing.*

The trial court did not err by denying defendant's postsentence, successive motion for withdrawal of guilty plea without a hearing, because defendant failed to show manifest injustice.

111001 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: K.H-T.

Affirmed.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Termination of parental rights; permanent custody; R.C. 2151.414; best interest of the child; clear and convincing evidence.*

The court's termination of Mother's parental rights and award of permanent custody to the agency was supported by clear and convincing evidence in the record. Evidence presented at the hearing supported the court's findings that the child had been in agency custody for 12 or more months of a consecutive 22-month period, that the child cannot or should not be placed with either parent within a reasonable time, and that the award of permanent custody to the agency was in the child's best interest.

111080 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: D.T.C.

Affirmed.

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

KEY WORDS: *Delinquency; drive-by shooting; R.C. 2152.17(B)(2); term of commitment.*

Contrary to the defendant's claims otherwise, the trial court did not impose a definite five-year term of commitment at a secured facility, and instead, imposed a definite term of six months in compliance with the applicable statutory mandate.

111118 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
V.C. v O.C.

Affirmed.

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

KEY WORDS: *Child support; high-income case; R.C. 3119.04; needs and standard of living of the children and the parents.*

Trial court did not abuse its discretion in determining Father's child support obligation. Trial court complied with R.C. 3119.04 and determined the amount of Father's child support obligation after considering the needs and standard of living of the children and the parents. Trial court's findings of fact with respect to the needs and standard of living of the children and the parents were supported by competent, credible evidence in the record.

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111187 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SANFORD D. DOSS

Affirmed.

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

KEY WORDS: *R.C. 2929.19(B)(2)(c); notifications; res judicata.*

Appellant's argument on appeal challenging the trial court's failure to give the five notifications under R.C. 2929.19(B)(2)(c) is barred by res judicata because he could have raised this issue in his direct appeal.