

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 4

May 12, 2022

110427 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JAMES M. CARNEY, JR. v
OLMSTED OPERATOR, LLC DBA SYMPHONY AT OLMST, ET AL.

Affirmed.

Sean C. Gallagher, A.J.; Anita Laster Mays, J., concurs; Lisa B. Forbes, J., dissents with separate opinion.

KEY WORDS: *Probate; common pleas; jurisdiction; guardianship; visitation; motion to dismiss; subject-matter jurisdiction; exclusive jurisdiction.*

Affirmed common pleas court's dismissal of an action for lack of subject-matter jurisdiction. The complaint filed in the common pleas court raised claims pertaining to visitation rights. At the time the complaint was filed, guardianship proceedings were pending in the probate court, which had exclusive jurisdiction over all matters touching the guardianship, including visitation.

110676 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: L.T.

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: *Legal custody; manifest weight; objections to the magistrate's decision; abuse of discretion.*

The juvenile court did not abuse its discretion in awarding legal custody to Mother, where there was competent credible evidence supporting the decision. Further, Mother was not required to file a statement of understanding under R.C. 2151.353 to obtain legal custody.

When addressing objections to the decision of a magistrate, the juvenile court's review is de novo. The juvenile court has the discretion to agree or disagree with the magistrate's findings of fact and conclusions of law and does not simply function as a court of review looking for error.

Failure to object to or request changes to the case plan before the juvenile court, waives any objection to case plan goals on appeal.

CASE DECISION LIST

110709 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DERRICK L. HYCHE, JR.

Affirmed.

Michelle J. Sheehan, J.; James A. Brogan, J.,* concurs (with separate concurring opinion attached);
Eileen A. Gallagher, P.J., dissents (with separate dissenting opinion attached).

(*Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

KEY WORDS: *Presentence motion to withdraw guilty plea; motion to continue sentencing hearing.*

While a presentence motion to withdraw the guilty plea is to be treated liberally, it is within the sound discretion of the trial court to determine the circumstances justifying such a motion. Our review of the record does not indicate the trial court abused its discretion in denying appellant's motion to withdraw the guilty plea. The trial court also acted within its discretion in denying the motion to continue filed on the same day of the sentencing hearing.

110809 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN BOYD

Reversed and remanded.

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

KEY WORDS: *Reagan Tokes Law; constitutionality.*

State has right to appeal sentence that did not impose indefinite sentence under the Reagan Tokes Law. The Reagan Tokes Law has been found en banc in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, to be constitutional. The sentence is reversed and cause remanded.

110863 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DARRELL MCCLENDON v CUYAHOGA COUNTY SHERIFF OFFICE

Affirmed.

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

KEY WORDS: *Civ.R. 56; motion for summary judgment.*

The trial court did not err when it granted summary judgment in favor of appellee when appellee met its initial burden demonstrating

CASE DECISION LIST

(Case 110863 continued)

the absence of a genuine issue of material fact and appellant never responded to the motion for summary judgment.

110901 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WALTER PERRY, JR.

Affirmed.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Reagan Tokes Act.

Appellant's sentence under the Reagan Tokes Act is affirmed pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.

110985 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DEAUNTE BULLITT

Affirmed.

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

KEY WORDS: Subject-matter jurisdiction; personal jurisdiction; void; voidable; res judicata; petition for postconviction relief.

Trial court properly dismissed defendant's petition for postconviction relief as barred by res judicata where the judgment was voidable, and the defendant failed to raise his challenge to the judgment in direct appeal.

111053 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
In re: L.C.

Affirmed.

Michelle J. Sheehan, P.J., Eileen T. Gallagher, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Permanent custody; necessity of expert testimony for parent's mental health; ineffective assistance of counsel; admissibility of electronic print media.

Our review of the record reflects the trial court engaged in the required analysis and its findings under R.C. 2151.414(B)(1) and (E) are supported by clear and convincing evidence contained in the

CASE DECISION LIST

(Case 111053 continued)

record. No expert testimony is required for the finding regarding appellant parent's mental health. Counsel's performance was not defective for not objecting to the admission of electronic print media that were properly authenticated by witness testimony.

111054 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
REVONE ALBERT v MICHAEL PATTON

Reversed and remanded.

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

KEY WORDS: Accelerated appeal; refiled case; R.C. 2305.10(A); Sup.R. 36.017; Civ.R. 41; Civ.R. 12; Civ.R. 8; R.C. 2305.19; savings statute.

Plaintiff's allegation of refiling a previously dismissed action, especially coupled with the trial court's administrative transfer of the refiled action to the original judge, was sufficient to overcome defendant's motion to dismiss in which the defendant claimed that the refiling violated the one-year period under R.C. 2305.19.