

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 19, 2022

109801 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
V. K. v K. K.

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Child custody proceeding; R.C. 3127.15(A); Uniform Child Custody Jurisdiction Enforcement Act; UCCJEA; R.C. 3127.01(B)(7); home state; temporary absence; R.C. 3127.04(A); foreign country treated as a state R.C. 3127.22; unjustified conduct.*

Appellant's complaint for child custody was properly dismissed based on lack of subject-matter jurisdiction. Appellant and appellee, both Indian citizens, lived in Ohio when their child was born. A few months after the child's birth, appellant and appellee traveled with their child to India to attend a wedding. Appellant returned to Ohio, leaving appellee and the child in India for nearly a year. A few days after appellee and the child returned to Ohio, appellant filed for divorce and custody of the child. Because appellee lived with the child in India for more than six months immediately preceding commencement of the child custody proceeding, India has home-state jurisdiction under R.C. 3127.01(B)(7) and 3127.15(A)(1) to make the initial custody determination. The record did not support appellant's argument that appellee engaged in unjustifiable conduct under R.C. 3127.22 by deliberately delaying her and the child's return to Ohio to create jurisdiction in India.

109927 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES A. NASCEMBENI

Affirmed in part, vacated in part, and remanded.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *R.C. 2967.28(B); postrelease control; R.C. 2929.19(B)(2)(d); sentencing hearings; nunc pro tunc; R.C. 2947.23; fines and costs.*

The trial court failed to advise appellant of the period of postrelease control at the sentencing hearing and of the ramifications for violating the terms. However, appellant has completed his sentence and the state lacks jurisdiction to resentence. The state concedes that the sentencing judgment entry does not accurately reflect the trial court's resolution at sentencing of the waiver of fines and costs and imposition of extradition costs. The case is remanded for the sole purpose of issuing a nunc pro tunc entry to accurately reflect the trial court's rulings. See also R.C. 2947.23(C).

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110261 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
NIKKIE ANDERSON v ACCUSCRIPTS PHARMACY, LLC

Reversed and remanded.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Disability discrimination; summary judgment; substantially limited major life activity; disabled as a matter of law; epilepsy is a physical impairment; genuine issue of material fact.*

The trial court erred by granting summary judgment to the defendant-employer and determining that the plaintiff-employee did not demonstrate that she is disabled under the law. Under C.F.R. 1630.02(j)(1)(vii), epilepsy is a disability in terms of a prima facie case of disability discrimination. There are genuine issues of material fact remaining, including whether defendant-employer's legitimate, nondiscriminatory reason for terminating plaintiff-employee was merely pretextual.

110521 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v J. R.

Reversed, vacated, and remanded.

Eileen A. Gallagher, P.J.; Emanuella D. Groves, J., concurs; Michelle J. Sheehan, J., concurs in judgment only (with separate opinion).

KEY WORDS: *Juvenile court bindover proceedings; right to assistance of counsel; due process; suspended attorney; per se violation of right to counsel; totality of the circumstances.*

A juvenile's constitutional right to counsel in juvenile court proceedings flows to the juvenile through due process. Where a juvenile is represented in juvenile court bindover proceedings by a suspended attorney, due process requires that appellate court consider the totality of the circumstances in determining whether the juvenile was denied his or her constitutional right to the assistance of counsel. Considering the totality of the circumstances surrounding suspended counsel's representation of juvenile, including the reason for and duration of counsel's suspension, the context, scope, and duration of counsel's representation of juvenile and other factors relevant to counsel's representation, juvenile was denied her constitutional right to the assistance of counsel when represented by suspended counsel during juvenile court bindover proceedings.

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110593 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GREGORY NELSON, JR.

Affirmed.

James A. Brogan, J.,* Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

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

KEY WORDS: *Felonious assault; discharge of a firearm on or over prohibited premises; sufficiency of the evidence; manifest weight of the evidence; consecutive sentences; firearm specifications; Reagan Tokes.*

Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence despite inconsistencies in the victim's testimony. The Reagan Tokes Law is constitutional and therefore appellant's sentence pursuant to the law is valid. The court did not err by imposing consecutive sentences for firearm specifications as required by R.C. 2929.14.

110616 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARK GATES

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Jail-time credit; R.C. 2929.14(B)(2)(g)(i); R.C. 2949.12; R.C. 2967.191; Crim.R. 11; acceptance of a guilty plea; implicit acceptance; explicit acceptance; Reagan Tokes Law; indefinite sentence; R.C. 2929.19(B)(2)(c); notice of indefinite sentence.*

The trial court erred in failing to calculate and apply jail-time credit to appellant's convictions and in failing to provide the notification of indefinite sentence required by R.C. 2929.19(B)(2)(c). The trial court did not err in implicitly accepting appellant's guilty plea and in overruling appellant's constitutional challenge to the Reagan Tokes Law.

110677 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CORDELL SMITH

Reversed and remanded.

James A. Brogan, J.,* Anita Laster Mays, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

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

KEY WORDS: S.B. 201; Reagan Tokes Law.

The trial court erred by failing to impose a sentence pursuant to the Reagan Tokes Law.

110684 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ELIZABETH GRAYSON, ET AL. v CLEVELAND CLINIC FOUNDATION, ET AL.

Affirmed.

Sean C. Gallagher, A.J.; Lisa B. Forbes, J., concurs in judgment only with separate opinion; James A. Brogan, J.,* dissents with separate opinion.

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

KEY WORDS: Medical malpractice; statute of repose; R.C. 2305.113; motion to dismiss; Civ.R. 12; fraud exception; due process, right to remedy; due course of law; equal protection; vested claim.

The appellants have not demonstrated that application of the statute of repose under RC. 2305.113(C) is unconstitutional as applied in extinguishing their nonvested cause of action for medical malpractice discovered five years following the alleged rendering of medical care.

110691 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v OSBY C. SCOTT

Affirmed.

James A. Brogan, J.,* Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

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

KEY WORDS: Aggravated murder; murder; aggravated burglary; felonious assault; cruelty to animals; sufficiency of the evidence; Reagan Tokes.

Appellant's convictions were supported by sufficient evidence. The Reagan Tokes Law is constitutional and therefore appellant's sentence pursuant to the law is valid.

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110697 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SAM WATTERS

Affirmed.

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

KEY WORDS: *R.C. 2907.03(A)(1); sexual battery; coercion; R.C. 2907.05(A)(1); gross sexual imposition; attempted gross sexual imposition; force or threat of force; sufficiency of the evidence; weight of the evidence; ineffective assistance of counsel.*

There was sufficient evidence of coercion under R.C. 2907.03(A)(1) and force under R.C. 2907.05(A)(1) to support appellant's convictions for sexual battery, gross sexual imposition, and attempted gross sexual imposition, and the convictions were not against the weight of the evidence. Appellant's trial counsel was not ineffective for attempting to impeach the victim by an inconsistency rather than by an omission appearing in a summary of her interview with police.

110747 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RNE ENTERPRISES, LLC v IMPERIAL KITCHEN CABINET FACTORY, LLC, ET AL.

Dismissed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Mootness; voluntary payment; supersedeas bond.*

This court finds that this appeal is moot because appellant failed to obtain a bond to stay the execution of the judgment and appellee obtained full satisfaction of the judgment during the pendency of the appeal.

110792 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROSE M. SOLTIS v COMFORT KEEPERS, DBA, E GROUP INC., ET AL.

Affirmed.

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

KEY WORDS: *Motion for summary judgment, workers' compensation, timeliness of appeal, failure to exhaust administrative remedies.*

Plaintiff did not timely appeal the denial of workers' compensation

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(Case 110792 continued)

benefits when the Bureau of Workers' Compensation ("BWC") received the appeal after the deadline to file. The trial court did not err by granting summary judgment to the BWC for lack of jurisdiction because plaintiff failed to exhaust her administrative remedies.

110822 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GARY SZEWCZYK v CENTURY FEDERAL CREDIT UNION

Affirmed.

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

KEY WORDS: Civ.R. 12(B) (6) motion to dismiss; breach-of-contract; breach of the implied covenant of good faith and fair dealing; unjust enrichment; unambiguous contract.

The parties' contract is unambiguous, and the overdraft fee appellee charged appellant did not breach the terms of the contract.

The implied covenant of good faith and fair dealing is part of a contract claim and does not stand alone as a separate claim from breach-of-contract. Because there was no breach of the parties' contract, appellant's breach of the implied covenant of good faith and fair dealing must necessarily also fail.

A party pursuing relief for breach-of-contract cannot at the same time seek equitable relief from unjust enrichment.

The trial court properly granted appellee's Civ.R. 12(B)(6) motion to dismiss for failure to state a claim on which relief can be granted. Appellant failed to state a claim for breach-of-contract, breach of the implied covenant of good faith and fair dealing, or unjust enrichment.

110848 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DARRIN LIDDY

Affirmed and remanded.

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

KEY WORDS: Consecutive sentences; R.C. 2929.14(C)(4); factual findings.

The trial court did not erroneously impose consecutive sentences when it made the findings required by R.C. 2929.14(C)(4) and the record supports those findings.

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110855 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEE JONES

Affirmed.

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

KEY WORDS: *Void judgment; postconviction proceedings; motion to withdraw guilty plea; Crim.R. 32.1.*

Defendant's postconviction motion must be construed as a motion to withdraw a guilty plea; however, the trial court lacked authority to vacate the pleas because the defendant's guilty pleas had already been affirmed in a direct appeal from the conviction.

110856 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MARILYN WILLIAMS-SALMON v DEEPAK RAHEJA, M.D., ET AL.

110928 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MARILYN WILLIAMS-SALMON v DEEPAK RAHEJA, M.D., ET AL.

Affirmed.

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

KEY WORDS: *Civ.R. 33; Civ.R. 34; interrogatories; discovery dispute; motion to compel; blanket assertion of privilege; Fifth Amendment right against self-incrimination; Ohio Constitution, Article I, Section 10.*

The trial court did not err or abuse its discretion in compelling appellants' discovery response when appellants failed to properly invoke their Fifth Amendment right against self-incrimination by giving the same blanket response to 116 discovery requests. The onus was not on the trial court to perform a question-by-question inquiry as to the merits of the appellants' assertion of privilege. The appellants first had to assert the privilege in specifics sufficient upon which the trial court determines whether the privilege had been properly asserted as to each discovery request.

110905 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NORRIS L. BROWN

Affirmed.

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

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(Case 110905 continued)

KEY WORDS: Reagan Tokes Law; separation of powers; due process.

The Reagan Tokes Law, under which defendant was sentenced, does not violate constitutional guarantees of due process and separation of powers.

110920 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SHANE HAWES v DOWNING HEALTH TECHNOLOGIES, L.L.C., ET AL.

Affirmed in part; reversed in part; vacated in part; and remanded.

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

KEY WORDS: *Manifest weight of the evidence; de facto fiduciary duty; fiduciary relationship; complete dependence by inferior party; fraudulent inducement; employment contract; waiver of claim; impracticability; performance of contract after learning of fraud; ratification; civil conspiracy; intracorporate-conspiracy doctrine; R.C. 1707.41; R.C. 1707.43; election; remedy; failure to join party; waiver of affirmative defense; punitive damages; abuse of discretion; actual malice; clear and convincing evidence; attorney fees award.*

The trial court erred in finding that appellant owed a de facto fiduciary duty to appellee when there was no showing that appellee relied solely upon appellant in deciding to invest in the company. The court's judgment in favor of appellee on the breach-of-fiduciary-duty claim was therefore against the manifest weight of the evidence. The court further erred in (1) finding that appellee had not waived his claim for fraudulent inducement with regard to the employment contract by continuing to work for the company and signing a subsequent agreement under the same terms; (2) awarding appellee relief under R.C. 1707.43 when he elected to proceed under R.C. 1707.41; and (3) awarding punitive damages and attorney fees when there was no showing of actual malice.

The trial court did not err in (1) declining to offset appellee's recovery by the amount he earned from other employers during the remainder of his employment contract; (2) allowing appellee to recover on the investment that was jointly owned by himself and his wife when his wife was not joined as a party; and (3) declining to apply the intracorporate-conspiracy doctrine when there was insufficient evidence presented at trial outlining the relationships between the corporate defendants. In addition, the trial court did make a finding on the issue of fraudulent intent and thus did not err on this issue.

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110938 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE: G.W.

Reversed and remanded.

Emanuella D. Groves, J.; Eileen A. Gallagher, J., concurs; Sean C. Gallagher, A.J., dissents (with separate opinion).

KEY WORDS: *Parental rights; R.C. 2151.414(B)(1)(a)-(e)/clear and convincing evidence; R.C. 2151.414(D)/best interest of the child; findings; abuse of discretion.*

The juvenile court failed to establish by clear and convincing evidence that termination of Mother's parental rights was in the child's best interest.

In this matter, we find that the critical testimony required to tip the scales in favor of taking away a parent's fundamental liberty interest in raising their child is missing. At the time of trial, the agency's case worker was unable to confirm whether Mother had completed, complied with, or was engaged in the case plan services. The agency's case worker, while testifying almost a year later, had no current information about one or more components of Mother's case plan.

As a result, we are constrained to find that the trial court abused its discretion by granting CCDCFS' motion for permanent custody. Accordingly, we sustain Mother's sole assignment of error.

111097 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE: J.S.

Affirmed.

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

KEY WORDS: *R.C. 2151.28(B)(3); R.C. 2151.35(B)1(1); good cause; 90-day time period; motion to dismiss.*

Trial court did not err in denying Mother's motion to dismiss for the court's failure to hold the dispositional hearing within 90-days after the complaint was filed, as required by R.C. 2151.28(B)(3) and 2151.35(B)(1) where, under the circumstances of the case, the trial court found good cause pursuant to R.C. 2151.35(B)(1) to continue the dispositional hearing beyond the 90-day time limit.

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111145 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.H., ET AL.

Affirmed.

Sean C. Gallagher, A.J., Anita Laster Mays, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.353; R.C. 2151.413; R.C. 2151.414; clear and convincing evidence; best interest of the child.*

The record contains clear and convincing evidence to support the juvenile court's finding that any of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) applied and that it was in the best interest of the child to grant permanent custody to the agency. Additionally, as to a second sibling for whom permanent custody was sought under R.C. 2151.353(A)(4), the record supported the juvenile court's findings that (1) under R.C. 2151.414(E), the child could not be placed with one of her parents within a reasonable time nor should she be placed with either parent and (2) a permanent commitment to the agency was in the child's best interest as delineated under R.C. 2151.414(D)(1). The juvenile court's grant of permanent custody of the siblings to the agency was not against the manifest weight of the evidence.