

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 26, 2022

110567 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DOUG WOODS v BRIAN W. SHARKIN, ET AL.

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, J., Sean C. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Default judgment; abuse of discretion; sua sponte; convert; dismiss; notice; Civ.R. 12(B)(6); Civ.R. 12(C); news; media; balanced reporting; landlord; tenant.*

In this defamation case brought by a landlord and against news media and former tenants, the trial court's judgment is affirmed in part and reversed in part. The trial court did not abuse its discretion in denying landlord's motion for default against properly served defendants, but erred in sua sponte converting the default motion to a Civ.R. 12(B)(6) motion to dismiss without notice to the landlord and then dismissing the complaint against those defaulting defendants for failure to state a claim pursuant to Civ.R. 12(B)(6). Trial court did not err in granting the media defendants' Civ.R. 12(B)(6) motion to dismiss the complaint because the news report presented balanced reporting and it was substantially truthful. Landlord's complaint sufficiently pleaded causes of action to survive a former tenant's Civ.R. 12(B)(6) motion to dismiss and another defendant's Civ.R. (12)(C) motion for judgment on the pleadings.

110611 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARSHALL HOPE

110612 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARSHALL HOPE

110613 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARSHALL HOPE

Affirmed.

Sean C. Gallagher, A.J., and James A. Brogan, J.,* concur; Lisa B. Forbes, J., concurs in judgment only.

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

KEY WORDS: *Mandatory transfer; R.C. 2152.12(A)(2); probable cause; jurisdiction; R.C. 2152.02(C)(5); "child"; Reagan Tokes.*

The juvenile court correctly concluded that it lacked jurisdiction under R.C. 2152.02(C)(5), and therefore, the transfer under R.C. 2152.12(A)(2) to the general division did not require a

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probable-cause determination to effectuate the mandatory transfer.

110670 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
JASON G. JARDINE v CRYSTAL T. JARDINE

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Receiver; R.C. 2735.01; R.C. 2333.27; abuse of discretion; clear and convincing evidence; divorce; jointly owned business; dissipation of assets; hearing; competing evidence; R.C. 2735.04; costs of receivership; corpus of the receivership; powers of a receiver.*

The trial court did not abuse its discretion when it appointed an interim receiver over jointly owned businesses of the parties in a divorce action to safeguard the assets and rights of the parties during the pendency of the divorce action.

110685 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
SAL'S HEATING AND COOLING, INC. v BERS ACQUISITION CO., LLC, ET AL.

Affirmed.

Emanuella D. Groves, J., Eileen A. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Civ.R. 12(B)(6); motion to dismiss; complaint; pleading stage; de novo review; civil conspiracy; underlying tort; independent unlawful act; misappropriation of trade secret; OUTSA; preempted.*

A trial court's review of a Civ.R. 12(B)(6) motion to dismiss is limited to the four corners of the complaint along with any documents properly attached to, or incorporated within, the complaint. Within those confines, a court accepts as true all material allegations of the complaint and makes all reasonable inferences in favor of the nonmoving party. A plaintiff is not required to prove his or her case within the complaint at the pleading stage. As long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss. An appellate court reviews de novo a trial court's decision granting a motion to dismiss under Civ.R. 12(B)(6).

In this matter, appellant argues the trial court erred by dismissing its claim for civil conspiracy. To establish a civil conspiracy claim, the plaintiff must prove: (1) a malicious combination of two or more persons, (2) causing injury to another person or property, and (3)

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the existence of an unlawful act independent from the conspiracy itself. Our de novo review confirms that appellant failed to plead an unlawful act, that is separate and apart from the conspiracy itself. Appellant's failure proves fatal to this claim. As such, the trial court did not err when it dismissed appellant's claim for civil conspiracy.

Appellant also argues that the misappropriation of trade secrets claim in Count 8 should not have been dismissed as being preempted by OUTSA. OUTSA displaces conflicting tort, restitutionary, and other laws of this state providing civil remedies for misappropriation of a trade secret. Again, our independent review reveals that the allegations contained in Count 8 are, in substance, mirror images of those contained in Counts 4 and 5. As such, the trial court did not err in concluding that Count 8 was preempted by OUTSA. Accordingly, we overrule appellants' two assignments of error.

110703 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO, EX REL. MIKE DEWINE v ARCO RECYCLING, INC., ET AL.

Affirmed.

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

KEY WORDS: Construction and demolition debris; R.C. Chapter 3714; failure to identify witnesses and documents during discovery; failure to supplement discovery; motion in limine; clear and convincing evidence; operating an unlicensed construction and demolition debris facility; illegal disposal of construction and demolition debris; failure to comply with Ohio EPA director's orders; public nuisance; penalties and costs not excessive.

The trial court did not abuse its discretion by granting plaintiff's motion in limine to exclude defendants' witnesses and evidence where defendant failed to provide discovery on same.

The plaintiff proved by clear and convincing evidence that defendants operated an unlicensed construction and demolition debris facility, illegally disposed of construction and demolition debris, failed to comply with Ohio EPA director's orders, and created a public nuisance.

The penalties imposed on the defendants are not excessive because the record demonstrates that the defendants' actions created an extreme risk of harm, they benefitted financially, they acted with deliberate indifference to the law, and the plaintiff incurred extraordinary costs in cleanup at the facility.

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110714 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BRUCE ARNOFF v PAJ ENTERPRISES, LLC

Affirmed in part; reversed and remanded in part.

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

KEY WORDS: *Civ.R. 12(B)(6) motion to dismiss; fraud; civil conspiracy; negligence; motion to compel; sanctions.*

Trial court did not err in granting defendant's Civ.R. 12(B)(6) motion to dismiss where on the basis of the law and facts alleged plaintiff could prove no set of facts that would entitle him to relief on his claims for fraud, civil conspiracy, and negligence; defendant was not required to answer the complaint within 28 days because it filed a motion to dismiss; plaintiff never filed a motion to compel discovery and, thus, there was no error in the trial court's failure to impose sanctions on the defendant for not responding to plaintiff's discovery requests.

110718 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v RICHARD FUTO

Affirmed.

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

KEY WORDS: *R.C. 2953.21; postconviction relief; untimely; R.C. 2953.23(A); exceptions.*

Where a criminal defendant, after his direct appeal, files a motion seeking vacation or correction of his sentence on the basis that his constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21. Additionally, pursuant to R.C. 2953.21(A)(2), a postconviction petition shall be filed no later than 365 days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction. Further, a convicted defendant may file only one postconviction petition within the prescribed 365-day window and may not file an untimely or successive petition unless the defendant meets a high burden of demonstrating the "specific, limited circumstances" of R.C. 2953.23(A).

In this matter, appellant's petition was untimely, having been filed almost 13 years after the date on which the trial transcript was filed in the direct appeal of the underlying matter. Importantly, none of the exceptions contained in R.C. 2953.23(A) applied in this case. Appellant's basis for relief are not "new facts" but, instead, are all based on the record as it existed at the time of his trial and during his direct appeal. As such, the trial court had no jurisdiction to entertain appellant's untimely filed petition. Accordingly, we overrule appellant's sole assignment of error.

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110756 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DERRICK ECHOLS

Affirmed.

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

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

KEY WORDS: *Postconviction motion; res judicata; void and voidable sentencing; direct appeal.*

The trial court did not abuse its discretion when it denied the appellant's postconviction motion because the motion was untimely and barred by res judicata. Additionally, the appellant cannot use a postconviction motion to challenge his sentence because his sentence is voidable and must be challenged on direct appeal.

110776 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DENNIS CLAUSING

Vacated and remanded.

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

KEY WORDS: *Nunc pro tunc; jurisdiction while appeal pending; Reagan Tokes Law; R.C. 2901.011; failure to impose indefinite prison sentence; R.C. 2953.08(B)(2); appeal by state; sentence contrary to law.*

The trial court erred by imposing definite prison terms on appellee's rape convictions, which were both qualifying offenses subject to indefinite prison sentences under the Reagan Tokes Law. The sentences imposed by the trial court were contrary to law and thus were vacated and the case remanded for resentencing.

110818 CLEVELAND MUNI. G CIVIL MUNI. & CITY
AC ASSET LLC v CHANEL MITCHELL, ET AL.

Affirmed.

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

KEY WORDS: *Lease agreement; electronic signature; presumption; rebut.*

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(Case 110818 continued)

Trial court did not abuse its discretion in adopting the magistrate's decision that found that appellant failed to rebut with sufficient evidence the presumption that the lease was validly executed by use of electronic signature.

110866 LAKEWOOD MUNI. G CIVIL MUNI. & CITY
CHRISTOPHER HELTZEL v NICK VERIKAKIS, D/B/A V-BROTHERS PROPERTIES, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; Civ.R. 56(A); corporate veil; joinder; Civ.R. 19; indispensable party.*

Trial court properly granted summary judgment in favor of defendants where plaintiff failed to allege a cause of action against any of the defendants.

Trial court did not abuse its discretion in denying plaintiff's motion for joinder where the party he sought to join was not an indispensable party.

111217 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE I.A.-W.

Affirmed.

Frank Daniel Celebrezze, III, J., and Sean C. Gallagher, A.J., concur; Emanuella D. Groves, J., concurs in judgment only.

KEY WORDS: *Termination of parental rights; permanent custody; reasonable efforts; R.C. 2151.413; manifest weight of the evidence; clear and convincing evidence; R.C. 2151.414; could not or should not be placed with either parent; best interest of the child; abuse of discretion.*

The juvenile court's judgment granting permanent custody to the agency was not against the manifest weight of the evidence. Further, while not required to do so, the court properly determined that the agency had made reasonable efforts to reunify the family.