

November 10, 2022

110893 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENNETH V. MILLS

Reversed and remanded.

Cornelius J. O'Sullivan, Jr., J., and Emanuella D. Groves, J., concur; Lisa B. Forbes, P.J., dissents in part and concurs in part (with separate opinion).

KEY WORDS: *Sufficiency of the evidence; dereliction of duty; R.C. 2921.44(C)(2); R.C. 2921.44(C)(5); definition of "officer"; falsification; R.C. 2921.13(A)(1); R.C. 2921.13(A)(3); prejudicial evidence; Evid.R. 403(A); other acts evidence; Evid.R. 404(B); abuse of discretion; harmless error; probative value; Crim.R. 52; limiting instruction; prejudicial error; App.R. 12.*

There was sufficient evidence to support the misdemeanor convictions of appellant, who was Cuyahoga County's former regional director of corrections, for dereliction of duty and falsification. Appellant was an "officer" under the dereliction-of-duty statute. Because the word "officer" is not defined in the statute, we give the term its common, ordinary, and accepted meaning. Although appellant was appointed by the county executive, substantial evidence showed he held an office of trust, authority, or command. There was also sufficient evidence that appellant lied to county council during a council meeting when he said that he never blocked the hiring of nurses at the county jails.

The trial court abused its discretion and committed prejudicial error warranting a new trial when it allowed into evidence substantial testimony regarding nine inmate deaths that occurred before, during, and after appellant's tenure as regional director of corrections. The probative value of the evidence was substantially outweighed by the unfair prejudice to appellant. The multiple, combined errors were not harmless. The errors had an impact on the verdict. The conduct of the state combined with evidentiary error to cause greater impact. There was no probative value to the admission of an image taken from a jail security camera of an inmate shortly before the inmate died. The minimal limiting instructions the trial court gave to the jury were insufficient to overcome the admission of inadmissible evidence of inmate deaths. Even if the remaining evidence established appellant's guilt beyond a reasonable doubt, the blatant prejudice warrants a new trial.

Witness testimony regarding appellant's negative attitude was harmless error.

CASE DECISION LIST

111225 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JANICE COSTARAS v THOMAS P. GILSON, ET AL.

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 313.19; coroner's verdict; rebuttable presumption that coroner's ruling on death is legally accepted cause of death; Civ.R. 41(B)(2) involuntary dismissal; presumption against suicide; sufficiency and manifest weight of the evidence.*

Trial court's dismissal of plaintiff's complaint against the medical examiner seeking to change the manner of death from suicide to undetermined after a bench trial, pursuant to Civ.R. 41(B)(2), is affirmed. There is an absence of competent credible evidence to contradict the medical examiner's findings. The court's judgment is supported by sufficient evidence and not against the manifest weight of the evidence.

111267 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v ISABEL FIGUEROA

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, A.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Restitution; estimate; abuse of discretion; insurance; offset.*

Trial court did not abuse its discretion in basing its restitution order on a written estimate provided by the victim. Unless the evidence demonstrates that the victim submitted a claim to her insurance company, the trial court was not required to offset the restitution amount merely because of a possible insurance claim.

111332 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRIAN COLEMAN

Affirmed.

Sean C. Gallagher, A.J., and Cornelius J. O'Sullivan, Jr., J., concur; Kathleen Ann Keough, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Guilty plea; Crim.R. 11; substantial compliance; judicial coercion; R.C. 2953.08(D)(1); jointly recommended sentence.*

CASE DECISION LIST

(Case 111332 continued)

Affirmed. The defendant knowingly, voluntarily, and intelligently entered his guilty plea, and being advised of the maximum potential term of imprisonment should a defendant be found guilty of all counts at trial does not amount to judicial coercion into the guilty plea. R.C. 2953.08(D)(1) precludes appellate review of a jointly recommended sentence that was imposed by the trial court and that is otherwise in compliance with statutory law.

111352 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: E.E.D.

Affirmed.

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

KEY WORDS: Permanent custody; termination of parental rights; legal custody; standing of legal custodian; R.C. 2151.414; best interest of the child.

Although child's great-aunt, as nonparent legal custodian, lacked standing to challenge termination of parents' parental rights, she had standing to challenge juvenile court's permanent custody order as it related to her request to maintain legal custody of the child and the termination of her rights as legal custodian. Legal custodians are not entitled to same protections as parents prior to termination of their custody rights. Juvenile court did not abuse its discretion in determining that it was in the child's best interest that she not be returned to the legal custody of her great-aunt. Great-aunt had been convicted of committing domestic violence and child endangering against the child, the child and her counselor had been clear that she was not ready for family counseling with her great-aunt, the child wished to be placed in the permanent custody of the agency and the guardian ad litem recommended permanent custody. Juvenile court's decision was well reasoned, was not arbitrary or unconscionable and juvenile court's findings were supported by ample, competent and credible evidence in the record.

111468 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: SO.P., ET AL.

Affirmed.

Sean C. Gallagher, A.J., and Kathleen Ann Keough, J., concur; Cornelius J. O'Sullivan, Jr., J., concurs in part and dissents in part with separate opinion.

KEY WORDS: Legal custody; alcohol abuse; sobriety; welfare; children; best interest; R.C. 2151.353(A)(3); R.C. 2151.011(B)(21);

CASE DECISION LIST

(Case 111468 continued)

R.C. 2151.414(D); visitation; family counseling; trust; emotional welfare; preponderance of the evidence; residual rights.

Judgment affirmed. The juvenile court did not abuse its discretion, and its award of legal custody of the minor children to relatives in accordance with the best interest of each child was supported by the preponderance of the evidence. Mother had an extensive history of alcohol abuse, and although she had obtained sobriety over the last year, one of the children did not wish to have contact with her, the other children did not view her as an authority figure, issues of trust needed to be addressed, family counseling had not occurred, and valid concerns remained for the emotional welfare of the children. Mother retained residual parental rights, and she was not permanently foreclosed from seeking to regain custody in accordance with the law in the future.

111721	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v A.L.H.			

Vacated and remanded.

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

KEY WORDS: Conceded error; application for sealing record of conviction; R.C. 2953.32; hearing.

Trial court erred in denying application for sealing record of conviction pursuant to R.C. 2953.32 without a hearing. State conceded the error.