

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 27, 2022

110715 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DEENA ULLOM, ET AL. v EDWARD AGOSTON, ET AL.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Civ.R. 12(C) motion for judgment on the pleadings; de novo review; res judicata; interlocutory order/ruling; Civ.R. 41 dismissal.*

The trial court properly granted the defendants' motion for judgment on pleadings on the ground of res judicata. In the original action, when the trial court granted judgment on the pleadings in favor of two defendants, that ended the case against those two defendants. Following the dismissal of the remaining claims, the trial court's judgment in favor of the defendants became a final, appealable order. The plaintiffs failed to appeal.

The plaintiffs' refiled action against the same defendants as in the original action, for the same dispute, was barred under the doctrine of res judicata.

110984 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v OMARI CLIFTON

Affirmed and remanded.

Eileen A. Gallagher, J., and Eileen T. Gallagher, J., concur; Sean C. Gallagher, A.J., concurs in judgment only (with separate opinion).

KEY WORDS: *Motion to withdraw plea; Crim.R. 32.1; Crim.R. 11; abuse of discretion; presentence motion to withdraw guilty plea; Peterseim; competency of counsel; scope of hearing; profession of innocence; change of heart; motion to suppress; hybrid representation; pro se motion.*

The trial court did not abuse its discretion when it denied the defendant's pro se motions to withdraw his guilty plea. A trial court need not consider a pro se motion made by a defendant who is represented by counsel. Even considering the motions on the merits, it was within the trial court's discretion to deny the motions where the Peterseim factors and several other factors our court has identified as relevant to the consideration of withdrawal requests weighed against withdrawal. State v. Peterseim, 68 Ohio App.2d 211, 428 N.E.2d 863 (8th Dist.1980), at paragraph three of the syllabus; see also, e.g., State v. Moore, 8th Dist. Cuyahoga Nos. 108962, 108963 and 108964, 2020-Ohio-3459, ¶ 56. The defendant argued that the trial court did not conduct an adequate hearing on

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his motions, but the court's inquiry was adequate considering the merits of the motions. The defendant argued that his counsel was not "highly competent," but this factor weighs against withdrawal when the defendant is represented by competent counsel with regard to the plea; there need not be any exemplary mark of competence. The defendant argued that his motions set forth strong arguments for suppression of evidence, but the defendant knew about those arguments prior to pleading guilty and agreed to withdraw his motion to suppress as a term of the plea agreement after extensive conversations with counsel. The defendant claimed that he was actually not guilty, but he had pleaded guilty without professing his innocence and offered no evidence of his factual innocence.

The defendant's motions seem to be predicated not on any misunderstanding about the charges, potential penalties, plea proceedings or his potential arguments for suppression, but rather on "buyer's remorse" after the tragic and unexpected death of his children's mother shortly after the defendant pleaded guilty. At that point, the defendant seems to have felt that the potential benefits of pursuing suppression and a trial - including the possibility to return home to his children if his defense were successful - outweighed the risks of rejecting the state's plea offer and exercising his right to a trial. But this post-hoc reconsideration of the benefits of the plea is not a reasonable and legitimate basis for withdrawing the plea.

111032 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BIZFUNDS LLC v JETMO, INC. DBA MONROE TRANSMISSION, ET AL.

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, A.J., dissents with separate opinion.

KEY WORDS: *Summary judgment; genuine issue of material fact; judgment on the pleadings; punitive damages; attorney fees.*

The trial court did not err by granting the appellee's motion for summary judgment because the appellants have not demonstrated there are any genuine issues of material fact. The trial court did not err by denying the appellants' motion for judgment on the pleadings because Jetmo owner, Michael, engaged in fraud. The award of punitive damages and attorney fees was proper against Michael and Jetmo only, and the trial court did not abuse its discretion. However, the trial court erred when it failed to dismiss the claims against the facility owners Kleen and Laura (Michael's wife) because Laura and Kleen was not a party to the contract or engaged in the fraudulent behavior in concert with Michael.

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111069 CLEVELAND HTS. MUNI. G Civil Muni. & City
MICHAEL JIANG, ET AL. v LEWIS A. ZIPKIN, TRUSTEE, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Motion for sanctions; frivolous conduct; R.C. 2323.51; abuse of discretion; R.C. 5321.16; attorney fees.*

The trial court did not err in denying appellant's motion for sanctions because appellant failed to demonstrate that appellees engaged in frivolous conduct.

111226 BOARD OF TAX APPEALS H Admin Appeal
RONALD WILLIAMS v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Dismissed.

Michelle J. Sheehan, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Tax appeal; validity of appraiser-filed tax valuation complaint; failure to prosecute; mootness.*

The BOR exercised its jurisdiction over the tax valuation complaint pursuant to R.C. 5715.19, and the property owners' appeal to the BTA was dismissed for failure to prosecute. As such, the issue presented on appeal by the county appellants regarding the validity of a tax valuation complaint prepared and filed by an appraiser is moot.

111297 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRISTIAN MITCHELL

Affirmed.

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

KEY WORDS: *Consecutive sentence; Reagan Tokes Law; criminal history.*

Appellant's arguments are overruled because he raises the same arguments challenging the validity of the Reagan Tokes Law that were overruled in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), and he has not demonstrated that the trial court's findings under R.C. 2929.14(C)(4) were clearly and convincingly not supported by the record.

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111298 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROBERT ARTIS, II

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); maximum sentences; R.C. 2929.11; R.C. 2929.12; felony offenses.*

Trial court's sentence of maximum consecutive sentences for appellant's felony offenses was not contrary to law where the court complied with the mandates of R.C. 2929.14(C)(4) in imposing consecutive sentences and the record supported consecutive sentences, and where the maximum sentences were within the statutory range for the offenses, the trial court considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and 2929.12, and the record supported the imposition of maximum sentences.

111317 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SHANE BENDLER

Affirmed.

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

KEY WORDS: *Sentence; consecutive; R.C. 2929.14; R.C. 2929.41; presumption of concurrent sentence.*

Judgment affirmed. The trial court complied with the requirements of R.C. 2929.14.(C)(4) and made the required proportionality findings. Therefore, we cannot conclude that the record "clearly and convincingly" does not support these findings.

111322 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: G.G., ET AL.

111324 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.H., ET AL.

Affirmed.

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

KEY WORDS: *Voluntary participation in proceedings; predispositional temporary custody; abuse; neglect; temporary*

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custody; fair proceedings.

Appellant waived any defects in service because she voluntarily participated in the proceedings.

Sufficient evidence supported the trial court's decision to grant predispositional custody of the children to the Agency.

Sufficient evidence supported the trial court's finding that one of the children was abused. The child stated that appellant abused her, and a law enforcement official heard appellant tell the child she was going to beat her later.

Sufficient evidence supported the trial court's finding that both of the children were neglected. Appellant left the children, then 13 and 9 years of age, alone with an unidentified 15-year-old relative for several days while she spent time at a hotel. Appellant had previously been advised by the 13-year-old's therapist that the child needed to be supervised because of decision-making, behavioral, and impulsivity issues.

The record shows that appellant had a fair trial. The trial court assigned counsel for appellant, but she dismissed the attorney and proceeded pro se. Appellant has failed to demonstrate any error or abuse of discretion in the denial of her motions. She has also not demonstrated that the trial court failed to conduct an independent review of the magistrate's decisions.

111380 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VIRGIL JONES

Affirmed.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Motion to arrest judgment; void sentence; subject-matter jurisdiction; res judicata; direct appeal.

Appellant's motion to arrest judgment was barred by res judicata because the issues raised could have been asserted in his direct appeal but were not.

111417 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.O.

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur.

(Case 111417 continued)

KEY WORDS: Permanent custody; R.C. 2151.414(B)(1); clear and convincing evidence; best interest; abuse of discretion.

Trial court did not abuse its discretion in awarding permanent custody of dependent child to the children's services agency where there was clear and convincing evidence to support the trial court's findings under R.C. 2151.414(B)(1) that the child could not be placed with either parent or should not be placed with either parent and that permanent custody was in the child's best interest.