

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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September 15, 2022

110623 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
J.B. v O.S.Y., ET AL.

Reversed.

Lisa B. Forbes, J.; Michelle J. Sheehan, J., concurs in judgment only (with separate concurring in judgment opinion only attached); Sean C. Gallagher, A.J., dissents (with separate opinion attached).

KEY WORDS: *Civil stalking protection order; competent and credible evidence; abuse of discretion; menacing by stalking; pattern of conduct; knowingly cause.*

Trial court abused its discretion by granted a civil stalking protection order against the appellant, because the evidence presented at the hearings did not amount to menacing by stalking in violation of R.C. 2903.211(A)(1). The appellee's testimony concerned protests against her employer's business, at which the appellant was present as a protester. There was no evidence that appellant engaged in a pattern of conduct that knowingly caused the appellee to believe that the appellant will cause her physical harm or caused her mental distress. Judgment reversed.

110929 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RAYMOND BALINSKI

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Domestic violence; sufficiency of evidence; manifest weight; Crim.R. 29; motion for acquittal; victim testimony.*

The trial court correctly denied a Crim.R. 29 motion for acquittal where there was sufficient evidence to convict the defendant of domestic violence. The victim testified that the defendant cohabited with her and beat her up, threw lit cigarettes at her, threw her into a refrigerator, gave her a black eye and other bruising and hit her so hard in the ribs that she was in pain for a month.

The defendant's conviction for domestic violence was not against the manifest weight of the evidence either. While there were some inconsistencies in the state's case and in the victim's testimony, the victim was materially consistent when describing the physical harm that she said the defendant caused her. The existence and timing of several of her injuries were corroborated with photographs and through a police body-worn camera. And the defendant wrote letters to the victim in which he apologized for being abusive and head-butting her.

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111000 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICHARD MARCUS LENARD

Affirmed.

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

KEY WORDS: *Denial of motion for new trial without a hearing; new evidence; direct appeal; res judicata; voir dire; juror bias; abuse of discretion.*

The trial court did not abuse its discretion by denying appellant's motion for a new trial without a hearing. The evidence appellant relied on was not newly discovered evidence; his motion was untimely; and his claims of irregularity in voir dire, juror bias and ineffective assistance were barred under the doctrine of res judicata -they either were already raised and decided or could have been raised on direct appeal.

111018 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
J.B. v E.B.

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Cornelius J. O'Sullivan, J., concur.

KEY WORDS: *Domestic relations; divorce; abuse of discretion; hearing; dispute; factual terms; settlement agreement; open court; cite to the record.*

Judgment affirmed. The trial court did not abuse its discretion by adopting the agreement because the parties agreed to the terms in open court. Additionally, the trial court was not required to hold a hearing prior to adopting the agreement as its judgment issuing the parties a divorce because no disputes were brought to the trial court's attention.

111037 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v NATHANIEL TORRES

Affirmed.

Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur; Mary Eileen Kilbane, J., dissents with separate opinion.

KEY WORDS: *Testimonial statements; Confrontation Clause; hearsay; plain error; failure to object; Crim.R. 52(B); deliberate trial*

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tactic; App.R. 12; manifest weight of the evidence; bench trial; credibility; ineffective assistance of counsel; motion for new trial; newly discovered evidence; recanted testimony; abuse of discretion.

The trial court did not err in admitting the victim's statements to a police officer after the incident. Appellant failed to object to these statements and was unable to demonstrate plain error since the use of the statements were a deliberate trial tactic by appellant's counsel. In addition, appellant's convictions were not against the manifest weight of the evidence, and appellant's trial counsel was not ineffective. Finally, the trial court did not abuse its discretion in denying appellant's motion for new trial because appellant failed to demonstrate newly discovered evidence that would warrant a new trial.

111131	COMMON PLEAS COURT STATE OF OHIO v LIONEL SMITH	A	Criminal C.P.
111132	COMMON PLEAS COURT STATE OF OHIO v LIONEL SMITH	A	Criminal C.P.
111133	COMMON PLEAS COURT STATE OF OHIO v LIONEL SMITH	A	Criminal C.P.
111134	COMMON PLEAS COURT STATE OF OHIO v LIONEL SMITH	A	Criminal C.P.
111135	COMMON PLEAS COURT STATE OF OHIO v LIONEL SMITH	A	Criminal C.P.

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Pro se; right to counsel; motion to withdraw; hybrid representation; deprived; counsel; Reagan Tokes Act; constitutional.

The trial court did not err by denying the defendant's motion to withdraw his guilty plea. Defendant was represented by competent counsel throughout the proceedings and entered a knowing, intelligent, and voluntary plea following a Crim.R. 11 colloquy. The trial court did not err by applying the Reagan Tokes Act at the time of sentencing.

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111139 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RITA NADROWSKI v CITY OF CLEVELAND, ET AL

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *R.C. Chapter 2744; political subdivision liability, R.C. 2744.01; immunity, R.C. 2744.02(B); exceptions to immunity, R.C. 2744.02(B)(3); negligent failure to repair public roadways; actual notice; constructive notice; two-inch rule; sidewalk.*

Judgment affirmed. The trial court's grant of summary judgment in favor of the City is proper. Plaintiff failed to set forth sufficient facts to create a genuine issue as to the City's negligence. Plaintiff could not clearly identify where she fell or what caused her to fall. Furthermore, the photographs on which she relies to establish a defect in the street were taken either four or twenty-one months after the incident. There is no evidence in the record indicating that the City knew the street needed repair or that the City had knowledge of a faulty condition. Rather, the evidence demonstrates that the City inspected the street days prior to the incident and did not observe any elevation difference in the street. An amendment to R.C. 2744.02(B)(3), which became effective in April 2003, removed sidewalks from the list of immunity exceptions. As a result, there are no exceptions in R.C. 2744.02(B) that impose liability on a city for damages caused as a result of a failure to maintain a city sidewalk in a safe condition.

111173 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GRAIG A. BROWN

Reversed in part; vacated in part; and remanded.

Mary Eileen Kilbane, J., Anita Laster Mays, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Plain error; conceded error; abuse of discretion; maximum sentence; maximum fine.*

The trial court erred when it advised defendant he faced a 36-month prison term if he violated the terms of his probation where the maximum prison term for two felonies of the fifth degree is 24 months. The trial court abused its discretion when it imposed as a condition of defendant's community control the prohibition against being anywhere alcohol is sold, served, or used, where there was no connection between defendant's offenses and alcohol and the prohibition bore no relationship to defendant's rehabilitation or future criminality.

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111182 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHOICE HOTELS INTERNATIONAL, INC. v C & O DEVELOPERS LLC, ET AL.

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Arbitration; contract; choice of law.*

Trial court properly overruled motion to stay pending arbitration despite a mandatory arbitration clause in a franchise agreement where the parties' subsequent loan agreement clearly and unequivocally provided that disputes arising under the loan agreement were to be decided in a court of law and the subsequent loan agreement superseded the prior franchise agreement with respect to the issues involved in this case.

111185 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v W.C.

Reversed and remanded.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Cornelius J. O'Sullivan, J., concur.

KEY WORDS: *R.C. 2953.32; application to seal record of conviction; summary denial.*

Reversing the trial court's summary denial of appellant's application to seal record of his conviction and remanding for determination of all the statutory factors under R.C. 2953.32(C)(1).

111214 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WALTER HOLLY v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Civ.R. 49; jury interrogatories; abuse of discretion; motion in limine; expert witness; expert report; former Loc.R. 21.1; Civ.R. 26; workers' compensation.*

The trial court did not abuse its discretion when it declined to submit appellant's interrogatories to the jury in a workers' compensation appeal because the interrogatories would have been redundant.

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The trial court did not abuse its discretion when it granted appellee's motion in limine excluding appellant's proposed medical expert from testifying when appellant failed to submit its expert report to appellee in accordance with Civ.R. 26

111227 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SKODA MINOTTI COMPANY v JOHN H. KENT, ET AL.

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Summary judgment; breach of contract, collateral estoppel; actually and directly litigated; prior action; determination by court of competent jurisdiction.

The trial court did not err when it granted summary judgment in favor of appellee on its claim that appellants breach the parties' contractual agreement.

Applicable to this matter is collateral estoppel, or issue preclusion, which prevents relitigation of an issue that has been actually and necessarily litigated and determined in a prior action. Collateral estoppel applies when three requirements are met: the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action.

Appellants' adversarial proceedings in the Bankruptcy Court resulted in the specific finding that appellee did not breach the parties' contractual agreement. In the prior action, the court determined that appellants failed to provide certain material that appellee requested to complete the tasks at hand and, that such failure was a breach of the contract by appellant. Additionally, there is no dispute that the parties here were the identical parties in the prior action. Further, neither parties dispute that a court of competent jurisdiction entered a final judgment on the merits of the claim.

Because the instant issue, between the same parties, was decided, when appellants were fully represented and, when appellants had a full and fair opportunity to litigate this issue, collateral estoppel applies. We conclude that the breach-of- contract issue was already decided in the Bankruptcy Court. As such, there was no genuine issue as to any material fact and appellee was entitled to judgment as a matter of law.

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111292 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSHUA CARVER

Affirmed.

Sean C. Gallagher, A.J., Cornelius J. O'Sullivan, Jr., J., and Mary J. Boyle, J., concur.

KEY WORDS: *Entrapment; sex offense; R.C. 2907.07(D)(2); importuning; predisposition.*

Defendant's conviction for importuning was not procured through entrapment, and therefore, the conviction is affirmed.

111392 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ALEXANDER NIKOOYI v VASILIKI NIKOOYI, ET AL.

Affirmed.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Intentional infliction of emotional distress; pro se plaintiff; burden of proof; Civ.R. 35; psychiatric evaluations; mental conditions; extension of discovery; summary judgment.*

Trial court properly dismissed plaintiff's complaint where plaintiff failed to meet his burden of presenting any evidence in support of any of the claims alleged therein.

Trial court properly denied plaintiff's motion to compel the defendants to submit to a psychiatric evaluation where the defendants' mental conditions were not relevant to any of the claims.

Trial court acted within its discretion to regulate its own docket when it ordered plaintiff to file a motion for summary judgment.