

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 20, 2023

111593 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KEVIN SMITH

Affirmed.

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

KEY WORDS: *Self-defense; manifest weight; sufficiency; evidence; State v. Messenger, Slip Opinion No. 2022-Ohio-4562; ineffective assistance of counsel.*

Judgment affirmed. *The trial court properly charged the jury regarding self-defense and provided the requisite verdict forms. The fashion of the jury instructions and absence of a separate self-defense verdict form did not prejudice the defendant or rise to the level of plain error. Because the jury instructions and verdict forms were not erroneous, Smith's trial counsel was not ineffective. The defendant's murder and felonious assault convictions are not against the manifest weight of the evidence, and the State was not required to present sufficient evidence to disprove Smith's, self-defense claim.*

111678 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CECIL FLUKER

Affirmed.

Anita Laster Mays, A.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Manifest weight and sufficiency of the evidence; R.C. 2903.211(A)(1); menacing by stalking; R.C. 2929.15(A)(1); conditions of community control.*

The trial court's imposition of community control conditions was proper where the record supports that the conditions: *"(1) were reasonably related to rehabilitating the offender, (2) have some relationship to the crime of which the offender was convicted, and (3) relate to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation."* *State v. Jones, 49 Ohio St.3d at 53, 550 N.E.2d 469. Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence.*

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111693 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MILTON PAYNE

Reversed and remanded.

Sean C. Gallagher, J.; Lisa B. Forbes, J., concurs in judgment only; Mary Eileen Kilbane, P.J., dissents (with separate opinion).

KEY WORDS: *Dismissal; Crim.R. 48(B). Reversed and remanded.*

The trial court erred in dismissing the proceedings with prejudice based on the victim's failure to appear for trial because that decision was not based on any statutory or constitutional right, and a victim's failure to appear at trial does not in and of itself justify the dismissal of a criminal action with prejudice.

111806 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
CLIFFORD WILLIAMS v DARIN MICHAEL BUCHNER, ET AL.

Affirmed.

Sean C. Gallagher, J., and Lisa B. Forbes, J., concur; Mary Eileen Kilbane, P.J., concurs in judgment only (with separate opinion).

KEY WORDS: *R.C. 955.28(B); strict liability; statutory claim; dog; owner; landlord; duplex; home; harbinger; out of possession; common area; shared areas; outside; yard; possession and control; sidewalk; personal injuries.*

Affirmed granting summary judgment in favor of the defendant owner of a duplex property on a strict-liability statutory claim under R.C. 955.28(B) for personal injuries allegedly caused by a tenant's dog while plaintiff was walking along a public sidewalk. The out-of-possession landlord/owner could not be found to be a harbinger of the dog under R.C. 955.28(B) when the tenants had shared possession and control of the yard and there was no evidence that the landlord had retained possession and control of the premises or any common areas or shared areas outside of the house.

111907 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE H.H.

111908 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE H.H.

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Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Attempted murder; aggravated robbery; juvenile offender; sufficiency of evidence; manifest weight.*

The state presented sufficient evidence to establish that appellant acted in complicity with two other individuals in committing the multiples offenses related to an armed robbery. Furthermore, having reviewed the entire record, weighed the evidence and all reasonable inferences, and considered the credibility of witnesses, we are unable to conclude that the juvenile court clearly lost its way in resolving conflicts in evidence in the state's favor.

111924	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE N.T., ET AL.			

111925	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE N.T., ET AL.			

Affirmed.

Eileen T. Gallagher, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

KEY WORDS: *Permanent custody; mental health; substance abuse; stable housing; basic needs; income; domestic violence; factors; visitation; best interests of the child; clear and convincing evidence; manifest weight; abuse of discretion.*

The judgment granting permanent custody to the Cuyahoga County Division of Children and Family Services, pursuant to R.C. 2151.414, was in the children's best interests because the mother failed to substantially remedy the conditions causing the children's removal despite the agency's assistance.

111931	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
MERIBETHE R. INGRAM v JULIA S. GLAVIN, ET AL.			

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Summary judgment; judgment on the pleadings; retaliation; R.C. 4112.02(I); adverse employment action; breach of fiduciary duty; wrongful termination in violation of public policy; self-serving affidavits; notice of appeal. Summary judgment in favor of defendants affirmed where plaintiff-employee failed to establish a materially adverse employment action beyond a mere inconvenience, which is not*

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(Case 111931 continued)

actionable.

Trial court properly granted judgment on the pleadings on plaintiff's claim for breach of fiduciary duty where there was no legal basis on which to bring such a claim for an employment action taken against her by a public-school board.

Trial court properly granted judgment on the pleadings on plaintiff's claim for wrongful termination in violation of public policy where plaintiff had an adequate legal remedy for retaliation pursuant to R.C. 4112.02(I).

111958 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DENNIS CALO

Affirmed.

Sean C. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: Postconviction relief; recast irregular motion; jurisdiction.

Affirmed. Without establishing that the trial court maintained continuing jurisdiction to review the motion filed 35 years after the final entry of conviction, which must be construed as a belated or successive petition for postconviction relief, based on the arguments presented, the trial court had no authority to do anything but deny the motion for the want of jurisdiction.

111996 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE K.T.

Reversed and remanded.

Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur; Michelle J. Sheehan, J., concurs in judgment only.

KEY WORDS: Termination of parental rights; motion to modify temporary custody to permanent custody; R.C. 2151.414; motion for legal custody; R.C. 2151.353(A); abuse of discretion; best interest of the child; R.C. 2151.414(D)(1).

The juvenile court abused its discretion when it granted legal custody of the child to his father and denied the Cuyahoga County Division of Children and Family Services' ("CCDCFS") motion for permanent custody. Father failed to establish by a preponderance of the evidence that legal custody to him was in the child's best interest. The agency clearly and convincingly established that permanent custody to the agency was in the child's best interest.

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112067 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE K.L.V.W.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Legal custody; R.C. 2151.353(A)(3); preponderance of the evidence; best interest of the child; R.C. 2151.414(D); abuse of discretion.*

The juvenile court did not abuse its discretion in awarding legal custody to Father.

112086 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE K.F., ET AL.

Affirmed.

Mary Eileen Kilbane, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.414; best interest; abuse; manifest weight of the evidence; hearsay.*

The juvenile court's decision to grant the agency's motion for permanent custody was not against the manifest weight of the evidence where the court made appropriate findings pursuant to R.C. 2151.414 and those findings were supported by clear and convincing evidence. The juvenile court did not abuse its discretion in permitting testimony from the children's godmother and counselor relating to the children's behavioral and emotional issues because, even if the testimony constituted inadmissible hearsay, Mother failed to establish that the court relied on this evidence in making its decision.