July 27, 2023

111350 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ANTHONY LETT

Affirmed.

Emanuella D. Groves, J.; Mary Eileen Kilbane, P. J., concurs in judgment only; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: Postconviction; Brady v. Maryland; abuse of discretion; suppressed evidence.

Trial court did not err when it dismissed appellant's postconviction petition without a hearing. State did not provide internal affairs investigation report for the detective assigned to the case. However, appellant failed to establish that the evidence was impeaching as required to find a Brady violation. Even if the evidence had been provided, impeaching the detective's credibility would have not prejudiced the appellant. The detective's testimony was merely supplementary. Several other witnesses testified regarding the same information. The convictions were supported by ample evidence, and appellant was not prejudiced by the state's failure to disclose the report.

111695 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
HEBA EL ATTAR, ET AL. v MARINE TOWERS EAST CONDO. OWNERS' ASSOC., INC.

Reversed, vacated, and remanded.

Mary Eileen Kilbane, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

KEY WORDS: Summary judgment; declaratory judgment; breach of contract; breach of fiduciary duty; condominium; association; declaration and bylaws; reserve requirement; law-of-the-case doctrine; jury instructions; abuse of discretion.

The trial court erred in not granting Owners-appellants' motion for summary judgment as to their declaratory-judgment claim where this court determined that the Association-appellees were required to build up and maintain a reserve requirement. The trial court abused its discretion by failing to apply the law of the case in its entirety in the trial court proceedings and jury instructions. The trial court did not abuse its discretion in instructing the jury on the essential elements of a breach-of-contract claim.

112025 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ROBYN D. MILES, ADMINISTRATOR, ET AL. v
CLEVELAND CLINIC HEALTH SYSTEM-EAST REGION, ET AL.

Reversed and remanded.

Kathleen Ann Keough, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

KEY WORDS: Summary judgment; medical negligence; expert witness; Evid.R. 601; active, clinical practice; substitution of expert witness; abuse of discretion.

Trial court erred in granting summary judgment in favor of the medical-defendants because Evid.R. 601, at that time, required that the expert witness satisfy the "active, clinical practice" requirement at the time the testimony is offered at trial. Granting summary judgment months before trial prematurely determined whether plaintiff's expert would be qualified at trial. Trial court abused its discretion in denying plaintiff's request to substitute its expert witness because the record demonstrated that the trial court afforded a medical defendant great latitude in her requests for continuances that delayed trial for approximately two years.

112039 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
2646 MAYFIELD LLC, ET AL. v CUYAHOGA COUNTY TREASURER, ET AL.

Affirmed.

Sean C. Gallagher, J., Anita Laster Mays, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: R.C. 5721.30 et seq.; tax certificates; foreclosure.

The trial court did not err in granting summary judgment in favor of the County upon all claims; the appellants failed to produce evidence of having complied with the statutory requirements under R.C. 5721.37(A) in order to seek foreclosure on the subject properties to secure their rights through the tax certificates they purchased for the subject properties.

112040 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RUSSELL YANKOVITZ v GREATER CLEVELAND REGIONAL TRANSIT AUTH., ET AL.

Affirmed in part, dismissed in part, reversed in part, and remanded.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Motion to dismiss; Civ.R. 12(B)(6); motion for

(Case 112040 continued)

judgment on the pleadings; Civ.R. 12(C); disability discrimination; R.C. Chapter 4112; political subdivision immunity; R.C. Chapter 2744; individual employees; exceptions; R.C. 2744.03(A)(6); R.C. 4112.02(J).

Trial court erred in failing to dismiss appellants' motion to dismiss or, alternatively, for judgment on the pleadings with respect to plaintiff's intentional-infliction-of-emotional-distress claim where appellants were immune under R.C. 2744.02 for intentional conduct as matter of law.

Trial court's denial of motion to dismiss or, alternatively, for judgment on the pleadings was affirmed where a statutory exception to immunity applied to plaintiff's disability discrimination claim.

112137 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TYRONE HOLMES

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Guilty plea; agreed sentence; validity of the plea.

Appellant argues his plea was not knowing, intelligent, or voluntary because the trial court did not inform him that his prison sentence would be mandatory. The record reflects appellant agreed to a ten-year prison term for his offenses under a plea agreement. Inherent in his agreement is his understanding that he would be serving a prison term (of ten years). It is apparent from our review of the record that appellant subjectively understood a ten-year prison term would be imposed upon the trial court's acceptance of his plea. Under the circumstances of this case, the trial court's advisement was in compliance of Crim.R. 11(C)(2)(a).

112272 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRISTOPHER KUMUHONE

Reversed and remanded.

Frank Daniel Celebrezze, III, J., Anita Laster Mays, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Motion to suppress; warrantless search; Fourth Amendment; probable cause; vehicle; single-purpose-container exception; backpack; automobile exception; trained drug dog; alert.

The trial court erred in granting appellee's motion to suppress evidence. Probable cause existed to search the vehicle, which

(Case 112272 continued)

extended to the backpack located therein. In addition, separate probable cause existed after the trained drug dog alerted on the backpack after it was removed from the vehicle. The search of the backpack was therefore proper.

112285 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v OSIRIS ALI

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, concur.

KEY WORDS: Crim.R. 33; motion for new trial; procedural irregularity; bench trial; untimely; abuse of discretion; vexatious litigator.

Over fifteen years after the defendant was convicted of sex offenses and sentenced to life in prison, he requested leave from the trial court to file a Crim.R. 33 motion for a new trial. He claimed that there was a procedural irregularity in his trial because the trial judge stepped off the bench and sat in the empty jury box for a portion of the trial in order to better hear certain testimony.

We affirmed the denial of his motion for leave to file a motion for new trial, which the trial court issued without holding a hearing, because the motion on its face did not support the defendant's argument that he was unavoidably prevented from filing a timely motion. To the contrary, the motion showed that the defendant was present at his trial and knew that the judge had sat in the empty jury box. He was represented by counsel at the time and in his direct appeal, yet he failed to raise this argument as error at that time. Therefore, the defendant was not entitled to file a motion for a new trial. His argument was further barred by res judicata.

We declared the defendant to be a vexatious litigator because this appeal, which was meritless, was his twenty-second case challenging his convictions and sentence in our court alone. We reviewed this litigation history and found that he repeatedly engaged in frivolous conduct in our court. Our court had previously warned him that his conduct put him at risk of being declared a vexatious litigator.

112302 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MICHAEL RILEY

Affirmed.

Eileen A. Gallagher, P.J., Emanuella D. Groves, J., and Sean C. Gallagher, J., concur.

(Case 112302 continued)

KEY WORDS: Postconviction DNA testing; R.C. 2953.74; cartridge case; casing; murder; felonious assault; findings and conclusions; R.C. 2953.73(D); abuse of discretion; prior definitive test; outcome determinative; complicity.

The trial court acted within its discretion in denying an inmate's application for postconviction DNA testing of several cartridge cases recovered from the scene of a drive-by shooting. The inmate had been convicted of murder and felonious assault, among other offenses, stemming from the shooting.

While the trial court initially failed to state its reasons for denying the application, which would normally justify a remand, the court remedied that error while the appeal was pending and it had jurisdiction to do so. The trial court adopted, verbatim, the state's proposed findings of fact and conclusions of law. While the better practice would have been for it draft its own findings and conclusions, it was not error under the facts of the case for the court to adopt the state's.

As to the substance of the application, even presuming that the requested testing would produce an exclusion result, in the context of all the available admissible evidence an exclusion result would not have been outcome determinative. The inmate had been convicted on a complicity theory, not because the factfinder determined that he was the shooter. Even if someone else's DNA is on the cartridge cases, this would not diminish the evidence of the inmate's actions before, during and after the incident from which a rational trier of fact could infer - and from which the factfinder did, in fact, infer - that the inmate was complicit in these offenses. Judgment affirmed.