

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

June 1, 2023

111718	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v WILLIAM E. MOTLEY			

111720	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v WILLIAM E. MOTLEY			

Affirmed.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Aggravated vehicular homicide; aggravated vehicular assault; R.C. 2903.06; R.C. 2903.08; weight of the evidence; jury instruction; causation; other causes; search warrant; affidavit; Evid.R. 103; Evid.R. 701; Evid.R. 702; Crim.R. 16(K); Evid.R. 616(C); App.R. 16(A)(7); gruesome photographs; cumulative error.*

Affirmed. *Defendant's convictions for aggravated vehicular homicide and assault, carrying concealed weapons, operating a vehicle while under the influence of alcohol, having weapons while under disability, and attendant firearm specifications were not (1) against the weight of the evidence; (2) based on a faulty causation jury instruction; (3) based on the improper evidentiary rulings; or (4) the product of cumulative error.*

111777	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
LINDA BUTORAC v HUGH OSMIC			

Affirmed.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 12(B)(6); directed verdict; damages; corporate shield.*

Trial court did not err in denying appellant's motion to dismiss. Civ.R. 12(B)(6) tests the sufficiency of the complaint and appellee alleged sufficient facts to prevent dismissal.

Post-trial review of the denial of a motion to summary judgment is rendered moot when a jury finds in favor of the nonmoving party, demonstrating that there were genuine issues of material fact.

Trial court properly denied motion for directed verdict where evidence established that a genuine issue of material fact remained as to who had a legal interest in the properties in question.

Appellant could properly be sued personally where he never raised a corporate shield defense, never established that his behavior was covered by the corporate shield, and defended his actions as an individual actor not as someone acting on behalf of the corporation.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 2 of 6

(Case 111777 continued)

Damages award did not include attorney fees where jury was not instructed on attorney fees and no testimony was presented to establish the amount of attorney fees. Award was not excessive when evidence was presented to establish damages, even though damages cannot be calculated with mathematical certainty. The damages award was within the range of numbers established by the evidence at trial.

111877	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
JENNIFER L. STUEBER v OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION			

Affirmed in part; reversed in part; dismissed in part; remanded.

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

KEY WORDS: *Wrongful termination; complaint; allegations; motion to seal; motion to strike; motion to dismiss; motion for protective order; final appealable order; attorney-client privilege.*

Judgment affirmed in part; reversed in part; dismissed in part; and remanded. The OTIC's motion to dismiss the amended complaint and motion to stay and for protective order are not final appealable orders that can be reviewed in this appeal. The denial of the motion to strike and seal is a final appealable order that can be reviewed on appeal. At this initial point in the proceedings and based on the plaintiff's allegations, we find that the amended complaint is subject to the attorney-client privilege and the amended complaint should have been sealed. The matter is remanded to the trial court to seal the amended complaint and for further proceedings.

111918	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: Z.M.			

Affirmed.

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

KEY WORDS: *Juv.R. 29; Juv.R. 34; adjudicatory hearing; dispositional hearing.*

Trial court did not err when it accepted mother's agreement to legal custody. The requirements for accepting admissions in Juv.R. 29 apply solely to adjudicatory hearings. The hearing appealed from in this case was a dispositional hearing, which is governed by Juv.R. 34.

Mother's alternate theory raised for the first time in her reply brief, i.e., that her agreement was not knowingly, voluntarily, and intelligently made, was not properly before the court. A reply brief

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 3 of 6

(Case 111918 continued)

is solely for the purpose of rebutting the issues raised in the appellee brief, not for raising new assignments of error.

111976	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
MARY LA RICCIA v OHIO CIVIL RIGHTS COMMISSION			

Affirmed.

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

KEY WORDS: *Ohio Civil Rights Commission; discrimination; disability; R.C. 4112.06; R.C. 4112.05; Americans with Disabilities Act, App.R. 12; App.R. 16; abuse of discretion; OCRC record; pre-complaint investigation; no probable cause finding.*

Pro se appellant filed a complaint with the Ohio Civil Rights Commission against the Cleveland Clinic Foundation alleging that the hospital discriminated against her based on her disability because the hospital denied her provider of choice after the appellant sent numerous inappropriate messages to her doctor through the hospital's MyChart messaging system. The OCRC made a finding of no probable cause and dismissed her complaint. On appeal to the trial court, the court upheld the commission's decision. On appeal to this court, appellant argued that the OCRC submitted an incomplete record to the trial court, the trial court ignored her evidence, and the OCRC misinterpreted the law.

The OCRC did not submit an incomplete record to the trial court and the trial court did not err when it did not consider the pro se appellant's additional filings because they were not part of the commission's record and the trial court determined that it would only consider the commission's record and the parties' briefs.

The trial court did not abuse its discretion in determining that the OCRC's finding of no probable cause is not unlawful, irrational, arbitrary or capricious. Appellant did not show that her behavior was caused by her alleged mental disability, but even if she had so shown, the hospital did not terminate the physician-patient relationship because of appellant's alleged disability. The hospital offered to assist appellant to find another provider within the hospital system that could provide more suitable treatment.

111992	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JUAN A. BURGOS-DELGADO			

Affirmed.

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

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 4 of 6

(Case 111992 continued)

KEY WORDS: Ineffective assistance of counsel; joinder of indictments; motion to dismiss; trial strategy; consecutive sentences; complicity jury instruction; admission of evidence.

Appellant failed to demonstrate ineffective assistance of trial counsel. The joinder of the indictments was proper. The crimes in the indictments occurred days apart, both involved drugs, and were part of appellant's course of criminal conduct. The testimony and evidence relating to the two indictments were simple and direct. Trial counsel was not ineffective for not filing a motion to dismiss. There was no speedy trial violation and appellant has not demonstrated that he was prejudiced by any preindictment delay. Counsel was not ineffective for employing an unsuccessful trial strategy.

The trial court was not required to make findings for the imposition of consecutive sentences because it sentenced the appellant to a prison term of life without the possibility of parole.

The trial court did not abuse its discretion in giving a complicity instruction because the testimony supported such an instruction.

The trial court did not abuse its discretion by allowing the admission of a 2021 video of the appellant walking without incident. Since the appellant was apprehended in 2018, he has maintained that he was disabled and unable to walk. Therefore, the 2021 video was relevant and not unduly prejudicial.

112028	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v KARLOS BLEVINS			

Affirmed.

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

KEY WORDS: Juvenile; bindover; transfer; probable cause; acts; subject-matter jurisdiction; vacate; convictions; aggravated murder; tampering with evidence; new charges; rooted; R.C. 2151.23(H).

Affirmed trial court's denial of motion to vacate convictions upon following the decision in State v. Burns, Slip Opinion No. 2022-Ohio-4606 (Dec. 23, 2022). The case does not involve the jurisdictional defects identified in State v. Smith, 167 Ohio St.3d 423, 2022-Ohio-274, 194 N.E.3d 297. The defendant was indicted with new charges that were rooted in the acts that were the basis of the transfer from juvenile court, and he could be convicted for the offense of tampering with evidence pursuant to R.C. 2151.23(H).

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 5 of 6

112079	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
MAUREEN BOUCHER v CITY OF CLEVELAND			

Affirmed.

Eileen T. Gallagher, J., Kathleen Ann Keough, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Immunity; political subdivision; proprietary function; negligence; utility; genuine issue of material fact; exception; defense; discretionary; allocation of resources; personal injury.*

Viewing the facts in the case in the light most favorable to the nonmoving party and resolving any doubt in favor of the nonmoving party, the trial court did not err in concluding that the city was not entitled to immunity from liability at the summary judgment phase of the proceedings.

112289	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v RAYVONNE MOORE			

Reversed in part, vacated in part, and remanded.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Loc.App.R. 16(B); conceded error; community-control sanctions; nexus between underlying offense and community-control sanctions; and drug- and alcohol- related community-control sanctions.*

The trial court abused its discretion when it imposed community-control sanctions related to drug- and alcohol-prohibitions where there was no connection between the underlying offense and the use of drugs or alcohol.

112366	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE B.K., ET AL.			

Affirmed.

Michelle J. Sheehan, P.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Parental right; permanent custody; legal custody; best interest of the child.*

Our review indicates that the juvenile court properly engaged in the two-prong analysis set forth in R.C. 2151.414 and that clear and convincing evidence supports the court's decision granting

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 6 of 6

(Case 112366 continued)

permanent custody of the children to the agency. While mother moved for legal custody to maternal grandmother, the issue in this case is whether permanent custody should be granted to the agency, not whether legal custody should be granted to maternal grandmother. If permanent custody to the agency is in the children's best interest, legal custody to a relative necessarily is not.

112369	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: L.P., ET AL.			

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Permanent custody; substance abuse; neglect; R.C. 2151.414(E)(1); reasonable case planning; diligent efforts; reasonable efforts; best interest; continuance; good cause; permanency.*

Affirmed the juvenile court's decisions granting permanent custody of each child to the children services agency. The juvenile court's determination under R.C. 2151.414(E)(1), relating to reasonable case planning and diligent efforts by the agency, was supported by clear and convincing evidence in the record, as were all of the juvenile court's statutory determinations for awarding permanent custody of each child to the agency. The juvenile court did not abuse its discretion in denying the requested continuance that was made on the day of trial where good cause was not demonstrated, the case had been pending for nearly two years, and it was not in the best interest of the children to delay their need for permanency.