

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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March 9, 2023

111416 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: Q.S., ET AL.

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Parental rights; temporary custody; R.C. 2151.353(A); preponderance of the evidence; manifest weight; best interest of the children; reasonable efforts; R.C. 2151.419(A)(1); ineffective assistance of counsel; prejudice; due process; 90-day waiver.*

Juvenile court's decision to award temporary custody to CCDCFS was supported by the preponderance of the evidence and was not against the manifest weight of the evidence. Juvenile court did not abuse its discretion in determining that it was in the children's best interest to grant temporary custody to the agency. Although mother had engaged in a number of services, mother had not yet shown that she had sufficiently benefited from those services to resolve the concerns that led to the children being removed from the home. There was nothing in the record to support mother's claim that the juvenile court relied on "perjured" testimony or impermissibly disregarded statements made by the children during in camera interview in granting temporary custody of the children to the agency. Record supported juvenile court's finding that that reasonable efforts were made to eliminate the continued removal of the children from the home or to make it possible for the children to return home.

Record did not support mother's claim that she was denied the effective assistance of counsel. Even assuming there was some deficiency in her counsel's performance, mother did not show that she was prejudiced by any such alleged deficiency given that substantial competent credible evidence was presented supporting the juvenile court's decision to grant temporary custody of the children to the agency.

Mother was not denied due process based on timing of temporary custody hearing where written 90-day waiver, signed by mother and her counsel, was filed with the juvenile court and there was nothing in the record to support mother's claim that she executed the 90-day waiver under duress.

111516 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
JAMES GRIM v CLEVELAND CLINIC FOUNDATION

Affirmed.

Lisa B. Forbes, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

KEY WORDS: *Summary judgment; race discrimination; retaliation; jury trial; manifest weight of the evidence; wrongful termination in violation of public policy.*

The court did not err in granting summary judgment to the defendant on employee's race discrimination and retaliation claims. The employee offered no evidence that he was fired because of his race or that he engaged in a protected activity. The jury verdict in favor of the defendant was supported by the weight of the evidence in the record. The employee offered no evidence that his termination was motivated by conduct related to public policy or that the defendant lacked a legitimate reason for the termination.

111538	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v CALVIN ALLEN			

Affirmed.

Anita Laster Mays, A.J., concurs; Kathleen Ann Keough, J., concurs and concurs with the separate concurring opinion; Sean C. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *R.C. 2903.11; felonious assault; sufficiency of evidence; manifest weight of evidence; sentence contrary to law.*

Appellant's conviction for felonious assault was legally sufficient and was not against the manifest weight of the evidence. Appellant's sentence was not contrary to law.

111616	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
CLEVELAND INTERNATIONAL FUND-MEDICAL MART HOTEL, L v OPTIMA 777, LLC, ET AL.			

Affirmed.

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

KEY WORDS: *Receiver; stalking horse contract; private sale of real property; R.C. 2735.04(D)(1)(a); maximize the return from the property to the receivership estate; and reasonable sale under the circumstances.*

The trial court's approval of the receiver's sale of real property that (1) maximized the return from the property to the receivership estate and (2) was reasonable under the circumstances did not demonstrate an abuse of discretion.

CASE DECISION LIST

111735 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AMEER HOLMAN

Affirmed.

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

KEY WORDS: *R.C. 2953.08; agreed sentence; sentencing range; R.C. 2929.19; youth.*

Appellant's sentence is not subject to appellate review where it was within a jointly recommended sentencing range and authorized by law.

111769 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LARRY HAYNIK

Affirmed.

Michelle J. Sheehan, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Rape; force; sufficiency of evidence; manifest weight; police officer's testimony.*

The "force" element of R.C. 2907.02(A)(2) is demonstrated through the evidence that the force was sufficient to overcome the victim's will. A victim need not prove physical resistance to the offender in prosecutions under this statute. In this case the victim's testimony was sufficient to prove that appellant purposely compelled the victim to submit to sexual conduct by force. Furthermore, when a police officer's testimony was based on his training and experience, related to his personal observations during an investigation, and helpful to determine facts in issue, the officer's testimony was properly admitted as lay testimony under Evid.R. 701.

111845 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BHARAT K. KHEMSARA, DVM v OHIO VETERINARY MEDICAL LICENSING BOARD

Affirmed.

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

KEY WORDS: *Administrative appeal; R.C. 4741.22(A)(1); Ohio Adm.Code 4741-1-10; revocation of license to practice veterinary medicine; R.C. 119.12(M); supported by reliable, probative and substantial evidence; in accordance with the law; due process; R.C.*

(Case 111845 continued)

119.07.

Common pleas court did not err or abuse its discretion in affirming Ohio Veterinary Medical Licensing Board's revocation of appellant's license to practice veterinary medicine. Common pleas court did not err in determining that appellant's due process rights were not violated where appellant was properly served with notice of opportunity for hearing, the content of the notice complied with R.C. 119.07 and appellant had a reasonable opportunity to be heard regarding the charges against him. Appellant did not show that any Board members were biased, partial or prejudiced against him. Rules of civil procedure, including discovery provisions, did not apply to administrative proceeding. Board was not required to provide an expert report or to present independent expert testimony establishing appellant's violation of the standard of care.

Medical records, expert witness testimony, appellant's testimony and evidence of prior disciplinary action supported the common pleas court's determination that reliable, probative and substantial evidence existed in the record to support the Board's adjudication order.

111890	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JEFFERY CLEVELAND			

Affirmed.

Anita Laster Mays, A.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Reagan Tokes Law.*

The appellant's sentence according to the Reagan Tokes Law has been ruled constitutional.