

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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March 23, 2023

111328 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MIDLAND FUNDING LLC v DUSTIE HOTTENROTH

Affirmed in part; dismissed in part.

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

KEY WORDS: *Law-of-the-case doctrine; partial remand; scope of appellate mandate; appellate jurisdiction; claims abandoned on appeal; commencement of class action; final appealable order; motion for reconsideration; R.C. 2505.02(B); Civ.R. 54(B).*

The trial court lacked jurisdiction to exceed the scope of the remand of this court from the prior appeal, which only reversed the dismissal of the individual claims. The class claims had been abandoned on appeal. Consequently, the court's consideration and adjudication of the motion for class certification was in error. However, since the court denied the motion for class certification, the parties are in the same positions, and the judgment is affirmed.

In addition, despite the trial court's inclusion of Civ.R. 54(B) certification, the judgment entry denying the motions for reconsideration did not constitute a final appealable order and this court lacked jurisdiction to review them.

111567 ROCKY RIVER MUNI. C Criminal Muni. & City
CITY OF ROCKY RIVER v MAZEN ALAREF

Affirmed in part, reversed in part, and remanded.

Lisa B. Forbes, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Community-control sanctions; abuse of discretion; Jones test; persisting in disorderly conduct; no-contact; victims; abstain drugs and alcohol; asylum; support; restitution.*

The trial court's imposition of no-contact with the appellant's wife and daughter was a proper condition of community control when appellant pled guilty to persisting in disorderly conduct. However, the trial court abused its discretion when it imposed drug- and alcohol-related conditions, a requirement that appellant cooperate with his wife and daughter's asylum applications, and "continue to support" his wife and daughter as restitution. These conditions do not meet the Jones test and, are therefore, reversed. Judgment affirmed in part and reversed in part.

CASE DECISION LIST

111608 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE M.P.

Affirmed.

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

KEY WORDS: *Juvenile adjudication; juvenile delinquency; rape; R.C. 2907.02; gross sexual imposition; R.C. 2907.05; Evid.R. 803(4); social worker testimony; SANE nurse testimony; sufficiency of the evidence; penetration; manifest weight of the evidence.*

The juvenile court's adjudication that defendant was delinquent of seven counts of rape and two counts of gross sexual imposition is affirmed. The trial court did not err in admitting hearsay testimony from the CCDCFS social worker and the SANE nurses where it fit into the hearsay exception under Evid.R. 803(4), statements made for purposes of medical diagnosis or treatment. Furthermore, the adjudications were not based on insufficient evidence or against the manifest weight of the evidence.

111635 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
GERARD LOFTUS, ET AL. v THREE PALMS CROCKER PARK, LLC, ET AL.

Affirmed and remanded.

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

KEY WORDS: *Summary judgment; respondeat superior liability; scope of employment, commercial general liability coverage policy; contract interpretation.*

Plaintiff, a passenger in a single car accident, sued the driver and driver's employer for injuries sustained in the accident. The driver was convicted of operating a vehicle under impairment and felony vehicular assault. The accident occurred after driver and plaintiff had dinner and socialized with friends. After the lawsuit was filed, the employer's insurance company intervened seeking declaratory judgment that the Commercial General Liability Coverage policy it issued to employer did not cover the accident. The trial court's grant of summary judgment to driver's employer was proper where driver was not acting within the course of employment at the time of the accident. The general business insurance policy would apply if the employee was acting in furtherance of the employer's business. The trial court's grant of summary judgment to employer's insurance company was proper because driver was not acting in furtherance of the employer's business at the time of the accident.

CASE DECISION LIST

111639 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
GERARD LOFTUS, ET AL. v THREE PALMS CROCKER PARK, LLC, ET AL.

Affirmed and remanded.

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

KEY WORDS: *Summary judgment; respondeat superior liability; scope of employment, commercial general liability coverage policy; contract interpretation.*

Plaintiff, a passenger in a single car accident, sued the driver and driver's employer for injuries sustained in the accident. The driver was convicted of operating a vehicle under impairment and felony vehicular assault. The accident occurred after driver and plaintiff had dinner and socialized with friends. After the lawsuit was filed, the employer's insurance company intervened seeking declaratory judgment that the Commercial General Liability Coverage policy it issued to employer did not cover the accident. The trial court's grant of summary judgment to driver's employer was proper where driver was not acting within the course of employment at the time of the accident. The general business insurance policy would apply if the employee was acting in furtherance of the employer's business. The trial court's grant of summary judgment to employer's insurance company was proper because driver was not acting in furtherance of the employer's business at the time of the accident.

111694 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JO DONTA TAYLOR

Affirmed.

Frank Daniel Celebrezze, III, P.J., Eileen A. Gallagher, J., and Michael John Ryan, J., concur.

KEY WORDS: *Admission of evidence; Evid.R. 404(B); other-acts evidence; abuse of discretion; failure to object; ineffective assistance of counsel; trial strategy; closing argument; prosecutorial misconduct; mistrial; curative instruction; sufficiency of the evidence; manifest weight of the evidence; hearsay testimony; vouch for credibility of another witness; failure to file motion to suppress; probable cause; traffic stop; window tint; other indicia of criminal activity; Reagan Tokes Law.*

Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence. Further, appellant did not receive ineffective assistance of counsel, and the trial court did not err in its admission of testimony or giving a curative instruction. Finally, appellant's sentence was properly imposed under the Reagan Tokes Law.

CASE DECISION LIST

111791 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v S.D.L.

Reversed and remanded.

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

KEY WORDS: *Petition to seal record; R.C. 2953.32; abuse of discretion; eligible offender; hearing.*

Because appellant was an eligible offender, the trial court erred by not holding a hearing in order to make the determinations required by R.C. 2953.32(C)(1) before ruling upon his petition to seal record.

111797 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE J.B., ET AL.

Affirmed.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Permanent custody; termination of parental rights; best interest of the children; denial of continuance.*

The juvenile court's termination of mother's parental rights is affirmed. Mother abandoned the children, who were in agency custody for more than 12 months of a consecutive 22-month period. Permanent custody to the agency is in the children's best interest. The court did not abuse its discretion by denying mother's attorney's request for a continuance when mother abandoned the children and failed to appear at the hearing on the motion for permanent custody.

111821 LYNDHURST MUNI. G Civil Muni. & City
TRAVIS HORN v NEIL CHERIAN

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Small claims; medical malpractice; derivative claim; loss of consortium; expenditures; motion to dismiss; Civ.R. 12(B)(6); standing; affidavit of merit; Civ.R. 10(D); common knowledge exception; damages; mental anguish; attorney fees; litigation costs; litigation expenses; collateral litigation; dismissal with prejudice; motion to reconsider.*

(Case 111821 continued)

The plaintiff’s small claims complaint alleged that the defendant doctor negligently used an online health management system to communicate with the plaintiff’s spouse during the spouse’s treatment. These communications allegedly caused the doctor’s employer to remove the spouse as a patient, leaving her without needed medical care. The plaintiff alleged that he and his spouse filed other litigation to attempt to undo that care decision and had suffered mental anguish.

We affirmed the municipal court’s dismissal, with prejudice, of the plaintiff’s malpractice claim against the doctor; the plaintiff lacked standing to assert a malpractice claim where he was not the doctor’s patient. After considering the concise, nontechnical nature of small claims complaints, we read the plaintiff’s complaint to assert derivative medical claims for loss of consortium and expenditures. We found that it was error for the municipal court to dismiss those claims with prejudice for lack of standing and for being outside the court’s subject-matter jurisdiction. But where the plaintiff did not file an affidavit of merit and waived any argument that Civ.R. 10(D) does not apply to small claims matters, we agreed that the complaint was deficient and remanded the matter with instructions for the municipal court to dismiss the derivative claims without prejudice for lack of an affidavit of merit.

We affirmed the dismissal, with prejudice, of the plaintiff’s prayer for damages attributable to legal expenses and attorney fees related to collateral litigation; these were not cognizable compensatory damages for loss of consortium or expenditures under the facts of the case and were barred by the American rule. The plaintiff’s motion to reconsider the municipal court’s dismissal order was a nullity and was properly denied.

111838	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v KEVIN WILLIAMSON			

111839	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v RYAN GLASS			

Reversed and remanded.

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

KEY WORDS: *Sentence; contrary to law; Reagan Tokes Law; constitutional.*

Reversed and remanded. *The trial court’s sentence was contrary to law because it failed to sentence codefendants with the Tokes Law, which this court found constitutional. Codefendants’ sentences are reversed, and the matter is remanded to the trial court to sentence each codefendant in accordance with the Tokes Law.*

CASE DECISION LIST

111916 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
OLATOSHIA BOSTICK v SALVATION ARMY, ET AL.

Affirmed.

Michael John Ryan, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Summary judgment; race discrimination; unlawful retaliation; wrongful termination in violation of public policy.*

The trial court properly granted summary judgment in favor of the employer where the employee failed to establish a prima facie case of race discrimination or unlawful retaliation. Further, the trial court properly granted summary judgment in favor of the employer on the employee's wrongful termination claim where the employee failed to demonstrate that (1) a clear public policy existed; (2) the employee's dismissal jeopardized the public policy; (3) the dismissal was motivated by conduct related to the public policy; and (4) the employer lacked an overriding legitimate business justification for the dismissal. Rather, the record demonstrates that in her 11-month period of employment with the employer, the employee was continually unable to get along with her coworkers and that was the reason for her termination.

111942 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DEBORAH GELETKA v METROHEALTH SYSTEMS, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, P.J., Eileen A. Gallagher, J., and Michael John Ryan, J., concur.

KEY WORDS: *Medical malpractice; motion for a directed verdict; Civ.R. 50; causation; expert testimony; reasonable degree of medical certainty; Evid.R. 703; motion for new trial; Civ.R. 59; admissibility of evidence; Evid.R. 901; authentication of evidence; R.C. 2317.422; misconduct of opposing counsel.*

Judgment affirmed. The trial court did not err in granting a defendant-doctor's motion for a directed verdict where plaintiff-patient's expert failed to opine that the doctor's alleged negligence caused the patient any pain or suffering. The trial court also did not err in failing to grant plaintiff's motion for a new trial based on an irregularity of the proceeding or opposing counsel's misconduct.

CASE DECISION LIST

111975 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE A.C., ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Michael John Ryan, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.414; clear and convincing evidence; best interests of the child; abuse of discretion.*

The record contains clear and convincing evidence to support the juvenile court's finding that the children were in the agency's custody for 12 months or longer for a consecutive 22-month period and that it was in the best interests of the children to grant permanent custody to the agency. The juvenile court's grant of permanent custody of the child to the agency was not against the manifest weight of the evidence nor was its finding that the parents posed an ongoing threat to the children an abuse of discretion.

112010 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
KEYBANK NATIONAL ASSOCIATION v HOGAN ELECTRIC COMPANY LLC ET AL

Dismissed.

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

KEY WORDS: *Breach of personal guarantee; summary judgment; untimely appeal; App.R. 4; bootstrapping.*

In 2019, the trial court granted summary judgment to the plaintiff on its claim for breach of personal guarantee. The defendant did not appeal that judgment; he instead filed several miscellaneous motions over the next three years asking the trial court for a hearing and arguing that the plaintiff was not entitled to the judgment the trial court awarded. He now appeals the summary denial of his most recent motion, the substance of which is again that the trial court erred in entering the summary judgment against him in 2019. This is an example of impermissible "bootstrapping," whereby an appellant assigns error from a final order that was not the subject of a timely appeal in an otherwise timely appeal. The appeal is untimely and we lack jurisdiction to consider it. Appeal dismissed.

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112036 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE K.R.

Affirmed.

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

KEY WORDS: *Best interest of the child; manifest weight; sufficiency of the evidence; abuse of discretion; R.C. 2151.414(D); R.C. 2151.414(E).*

Juvenile court's decision granting permanent custody of the child to the agency was supported by the sufficiency and greater weight of the evidence, where the record established that the Mother's three older children had previously been committed to the permanent custody of the agency; Mother gave birth to a fourth child; did not obtain prenatal care; and over the course of six months did not successfully complete case plan goals. Further, the record established that the child should not be returned to Mother's care, and Mother did not rebut that presumption as required by R.C. 2151.414(E)(11).

Further, the juvenile court did not abuse its discretion by including in its journal entry all of the best interest factors, even those that were not directly relevant to the case. The court was required to demonstrate that it considered all the factors when deciding the best interest of the child. Even so, the juvenile court in this case did include findings of fact that illustrated its consideration of the factors and what factors in this specific case supported its decision.