

CASE DECISION LIST

November 22, 2023

112226 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
U.S. BANK N.A., AS TRUSTEE v JOSEPH CLOVESKO, ET AL.

Affirmed.

Lisa B. Forbes, J., Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Foreclosure; motion for stay and sanctions; motion for postjudgment discovery; motion for leave to file reply brief; moot; R.C. 2325.51; abuse of discretion; new argument on appeal; App.R. 16.*

Appellant filed motions for stay, sanctions, postjudgment discovery, and leave to file a reply brief after the trial court granted the appellee a foreclosure. Subsequent to filing this appeal, the trial court granted a renewed motion for stay and appellant redeemed his home. Accordingly, the trial court's initial denial of the motion to stay is rendered moot.

Further, we find that the trial court did not abuse its discretion by denying the remaining motions at issue. In support of his position that the court erred in denying his motion for sanctions, appellant raised a new argument on appeal that he did not raise with the trial court. As such, we decline to review the merits of those arguments. Additionally, appellant did not argue on appeal how the trial court abused its discretion in denying his motion for postjudgment discovery in violation of App.R. 16. Finally, while appellant's assignment of error references the motion to file a reply brief, appellant does not reference this motion in his brief or make an argument regarding the alleged error of the trial court's denial. Appellant's assignment of error is overruled.

Judgment affirmed.

112268 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JASON PACHECO

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Conceded error; nunc pro tunc; R.C. 2903.08(C)(2) and (3); points; license suspension; consecutive sentences; prior conviction; postrelease control; enhanced classification; Reagan Tokes.*

The trial court's imposition of a ten-year driver's license suspension following a conviction for vehicular assault was contrary to law. Under R.C. 2903.08(C)(2) and (3), absent a prior

CASE DECISION LIST

(Case 112268 continued)

conviction, a defendant is not subject to an enhanced classification as it relates to license suspension. The trial court made the necessary findings for consecutive sentences. Reagan Tokes is not unconstitutional. The trial court erred when it stated in its entries that the defendant was convicted of felonious assault by means of a deadly weapon or dangerous ordnance, in violation of R.C. 2903.11(A)(2), rather than felonious assault in violation of R.C. 2903.11(A)(1); accordingly, the trial court must correct that error on remand.

112277 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMAL KUKLA

Affirmed.

Michael John Ryan, J., Frank Daniel Celebrezze, III, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Sixth Amendment; ineffective assistance of counsel; evidence outside the record.*

Appellant's claim that he was afforded ineffective assistance of counsel fails because he relies on evidence outside the record. The claim by appellant, who was convicted of a heinous murder, that he was prejudiced by his attorney's failure to investigate other suspects hinges on conversations he and his mother allegedly had with counsel that are not part of the trial court record and are therefore not properly brought before this court in a direct appeal.

112300 ROCKY RIVER MUNI. C Criminal Muni. & City
CITY OF FAIRVIEW PARK v TED BOWMAN

Affirmed.

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

KEY WORDS: *Fairview Park Codified Ordinances 333.01(A)(1)(a); operating a vehicle under the influence of alcohol; Fairview Park Codified Ordinances 529.07(B)(4); motion in limine; motion to suppress; insufficient evidence; manifest weight of evidence; exculpatory evidence; new trial.*

The convictions in this case were not against the manifest weight of the evidence and the evidence was sufficient to support the elements of the offenses. The trial court's denial of defendant's motions in limine and to suppress was not in error. The record does not reflect that the city failed to produce exculpatory evidence nor that the defendant was entitled to a new trial.

CASE DECISION LIST

112427 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ALI MOHAMMADPOUR v DAVOOD HAGHIGHI, ET AL.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Claim of nonpayment of account; manifest weight of evidence; expert testimony; setoff or recoupment.*

Plaintiff, an accountant, brought claims of breach of contract, nonpayment of account, and unjust enrichment against defendant company and individual for work performed. Defendants alleged counterclaims of breach of contract, fraudulent billing and professional negligence/malpractice. After trial to a jury, the jury awarded plaintiff damages on the claim of nonpayment of account only. The jury further found against defendants on their counterclaims.

Defendants appealed and argued the verdict on nonpayment of account was not proven and against the manifest weight of the evidence, that the verdict against their counterclaim for malpractice was against the manifest weight of the evidence because their expert's testimony was un rebutted by expert testimony, and that defendants were entitled to a setoff or recoupment against the award of damages.

An action on an account is appropriate where the parties have conducted a series of transactions for which a balance remains to be paid. The balance may be proven through oral testimony. Evidence was submitted at trial as to the payments made and the balance due on the account. A judgment will not be found to be against the manifest weight of the evidence when the verdict is supported by some credible, competent evidence that goes to all the essential elements of the claim. The jury's verdict was not against the manifest weight of the evidence because it was supported by competent, credible evidence. The jury's findings against defendants' counterclaim that plaintiff breached contract was not against the manifest weight of the evidence where there was credible, competent evidence as to plaintiff's performance of the contract.

The jury's finding against defendants' counterclaim that plaintiff committed professional malpractice was not against the manifest weight of the evidence where there was credible, competent evidence that supported the finding plaintiff did not commit malpractice. Although defendant provided expert testimony on the issue of malpractice, there was evidence presented at trial that allowed the finder of fact to reach a contrary conclusion to the expert's testimony. Defendants were not entitled to a setoff or recoupment against the award of damages because defendants' counterclaims alleging breach of contract or malpractice were not found by the jury.

CASE DECISION LIST

112456 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
OHIO COUNCIL 8, AFSCME, AFL-CIO, ET AL. v CITY OF LAKEWOOD

Reversed and remanded.

Mary J. Boyle, J., and Emanuella D. Groves, J., concur; Lisa B. Forbes, P.J., dissents (with separate opinion).

KEY WORDS: *Motion to dismiss; Civ.R. 12(B)(1); lack of subject-matter jurisdiction; exclusive jurisdiction; SERB; CBA; collective bargaining rights; R.C. Chapter 4711.*

Judgment reversed and remanded. Although the Union's application and motion to compel arbitration does not explicitly allege violations of R.C. Chapter 4117, substantively its claims arise from a labor dispute and resolution process set forth in the CBA, which stems from the rights created in R.C. Chapter 4117. The fact that the Union frames its action pursuant to R.C. 2711.03 is insufficient to vest jurisdiction in the common pleas court. Because the Union's application and motion to compel arbitration are based on rights set forth in R.C. Chapter 4117, its application and motion fall directly within the exclusive jurisdiction of SERB. Therefore, we find that the trial court erred by denying the City's motion to dismiss the Union's application and motion to compel arbitration for lack of subject-matter jurisdiction.

112489 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KIRANMAI PAKEER v CITY OF CLEVELAND, ET AL.

Reversed and remanded.

Sean C. Gallagher, J., Mary Eileen Kilbane, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *R.C. 2744.02(B)(1)(c); political subdivision immunity; ambulance; motor vehicle accident; summary judgment; wanton misconduct.*

Reversed. The city and its employee failed to demonstrate the absence of genuine issues of material fact upon the question of their immunity from liability for the injuries sustained by the plaintiff. Under R.C. 2744.02(B)(1), the City may be liable for the negligent operation of a motor vehicle by its employees unless the City can demonstrate, in part, that the operation of the vehicle did not constitute willful or wanton misconduct under subdivision (B)(1)(c). Because the plaintiff presented some evidence upon which the trier of fact could reasonably conclude that the city's employee's operation of the ambulance constituted wanton misconduct, the trial court erred in granting summary judgment in favor of the city and its employee.

CASE DECISION LIST

112505 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY ALARCON

Affirmed; remanded.

Kathleen Ann Keough, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Consecutive sentences; disproportionate; R.C. 2929.14(C)(4).*

Consecutive sentences affirmed where the trial court made the requisite findings under R.C. 2929.14(C)(4) to impose consecutive sentences and appellate court could not clearly and convincingly find that those findings, including the trial court's finding that consecutive sentences were not disproportionate to the defendant's conduct and the danger he poses to the public, were not supported by the record.

112522 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
STATE OF OHIO v ESTEPHEN CASTELLON

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21; untimely; successive; rape; kidnapping; speedy trial; prosecutorial misconduct; ineffective assistance of counsel; suppression of materially exculpatory evidence; Confrontation Clause; compulsory process; cumulative errors.*

The trial court properly denied an untimely and successive petition for postconviction relief where the defendant failed to show that he had been unavoidably prevented from discovering the facts upon which he relied. While the defendant obtained additional records about his case through a Freedom of Information Act request after his conviction, the records did not materially add to his knowledge of the underlying facts of how investigators obtained the evidence against him. He had the information he needed to raise these claims in his direct appeal or in his first petition for postconviction relief. Indeed, he did raise permutations of all of these arguments in earlier proceedings. Thus, the trial court was without jurisdiction to consider the successive postconviction petition. Moreover, the arguments were barred by res judicata. Judgment affirmed.

CASE DECISION LIST

112578 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SHERITA BOOKER

Reversed and remanded.

Sean C. Gallagher, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Crim.R. 48; reasons; dismissal; prejudice; without prejudice; constitutional rights; trial.*

Reversed the decision of the trial court and remanded with instructions for the trial court to vacate its dismissal of the case with prejudice and to enter a dismissal without prejudice. The trial court erred in dismissing the case with prejudice when it made no finding that there is a deprivation of the defendant's statutory or constitutional rights, the violation of which would bar further prosecution, and its stated reason for dismissing the case with prejudice was that the state's request to dismiss the case without prejudice was made the day of trial.

112615 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.E.

Affirmed.

Michael John Ryan, J., Mary Eileen Kilbane, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Evid.R. 807 child statements in abuse cases; Evid. R. 803 other acts evidence; hearsay; manifest weight; sentencing.*

The trial court did not abuse its discretion in allowing testimony pursuant to the hearsay exception enumerated in Evid.R. 807. We will not consider whether statements are in contravention of Evid.R. 803(4) when the appellant did not make a specific objection at trial and did not reference which statements he was challenging on appeal.

The appellant's conviction for gross sexual imposition is not against the manifest weight of the evidence. The appellant was not sentenced to consecutive sentences because the trial court merged his convictions and imposed a single sentence.

112745 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.C.J.

CASE DECISION LIST

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Custody; nonparent; unsuitability; relinquish custody; award of custody; detrimental to child; companionship rights; R.C. 3109.12.*

Where the evidence did not demonstrate that defendant-appellee was an unsuitable parent, the trial court did not abuse its discretion when it denied the motion of plaintiff-appellant - a nonparent - for custody. Additionally, the trial court did not abuse its discretion when it denied plaintiff-appellant's motion for companionship rights because plaintiff-appellant did not meet the statutory requirements of R.C. 3109.12.

112866	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
LES WAGENHEIM v CAROL WAGENHEIM			

Affirmed.

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

KEY WORDS: *Civ.R. 60(B); abuse of discretion; untimely.*

Trial court did not abuse its discretion in denying appellant's Civ.R. 60(B) motion to vacate judgment because appellant's claims pursuant to Civ.R. 60(B)(1), (2), and (3) were untimely, and his Civ.R. 60(B)(4) claim was both untimely and without merit.

112922	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
BARNETT MANAGEMENT v COLUMBIA RESERVE HOA, INC.			

Reversed and remanded.

Anita Laster Mays, A.J., Kathleen Ann Keough, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Motion to disqualify counsel, Ohio Prof.Cond.R. 1.7 conflicts of interest involving current clients, Ohio Prof.Cond.R. 1.13, organization as a client.*

Appellee lacked standing to disqualify appellant's attorney based on a conflict of interest under Ohio Prof.Cond.R. 1.7 where there was never an attorney-client relationship between appellee and the attorney that appellee was seeking to disqualify.