October 12, 2023

112022 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SHELLI L. WAECHTER v LASER SPINE INSTITUTE, LLC, ET AL.

Affirmed.

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

KEY WORDS: Motion for new trial; Civ.R. 59(A); Evid.R. 601; Evid.R. 601(B)(5); expert witness; liability; proximate cause; abuse of discretion; de novo; invited error; plain error; opening statements; closing arguments; professional conduct.

Judgment affirmed. The trial court properly denied plaintiff-appellant's motion for a new trial under Civ.R. 59(A)(1), (2), and (9). The trial court did not abuse its discretion or err when it allowed the defendant-appellee's proximate cause expert witness to testify; found that plaintiff-appellant's motion to disqualify the expert was untimely; permitted the use of a demonstrative illustration; and provided defense counsel with wide latitude to present opening statements and closing arguments. We find that plaintiff-appellant's counsel invited error by opening the door to the defense's proximate cause expert's standard-of-care testimony on cross-examination and that the expert's testimony on direct examination was not contrary to Evid.R. 601(B)(5). We further find that plaintiff-appellant withdrew her objections or failed to object to the use of the demonstrative illustration and to many of the allegedly false and prejudicial comments made by defense counsel during opening statements and closing arguments. We decline to find plain error in those instances. Nor do we find that defense counsel lacked candor, was unfair to Waechter or her attorney, or lacked impartiality and decorum to constitute the need for a new trial. Thus, we cannot say that the trial court abused its discretion or committed error of law when it denied plaintiff-appellant's motion for a new trial.

112313 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WESTLAKE SERVICES, LLC v SAMANTHA M. CHANDLER

Affirmed.

Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur; Kathleen Ann Keough, P.J., concurs in judgment only.

KEY WORDS: Motion to compel arbitration; motion to stay; arbitration agreement; nonsignatory; delegation clause; clear and unmistakable evidence; threshold questions of arbitrability; incorporation by reference; waiver by litigation conduct.

Even assuming the issue of waiver by litigation conduct could be

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properly delegated to an arbitrator, arbitration agreement did not contain clear and unmistakable evidence that the parties intended that an arbitrator decide issues of waiver by litigation conduct. Accordingly, the trial court did not err in deciding that issue itself and concluding that appellant had waived any right to arbitration based on its active engagement in litigation for over 15 months.

112331 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v OCTAVIA HATCHELL

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

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

KEY WORDS: Reagan Tokes statutory advisements; R.C. 2929.19(B)(2)(c); Reagan Tokes Law; S.B. 201; constitutional; indefinite sentence; contrary to law; remand; presentence motion to withdraw guilty plea; hybrid representation; change of heart; unlawful sentences; Crim.R. 11(C); felony of the third degree; R.C. 2929.14(A)(3); prejudice.

During the sentencing hearing, the trial court did not fully advise appellant on the Reagan Tokes statutory advisements pursuant to R.C. 2929.19(B)(2)(c). Absent the full statutory advisements, the proper remedy is to remand the case for the limited purpose of providing appellant with the required statutory notifications. Similarly, the case is remanded for resentencing on the abduction and having weapons while under disability convictions because the trial court imposed sentences that exceeded R.C. 2929.14(A)(3) and, therefore, were contrary to the law. The trial court's imposition of an indefinite sentence pursuant to the Reagan Tokes Law was not a violation of appellant's constitutional rights. Further, the trial court did not abuse its discretion when it denied appellant's presentence motion to withdraw his guilty plea. The trial court's plea hearing complied with Crim.R. 11.

112334 BEREA MUNI. C Criminal Muni. & City
S/O, CITY OF OLMSTED TOWNSHIP v DIANE DONNELLY

Affirmed.

Kathleen Ann Keough, J., and Frank Daniel Celebrezze, III, P.J., concur; Emanuella D. Groves, J., dissents (with separate opinion).

KEY WORDS: R.C. 2951.02(A); APL; probation officer; random inspections; warrantless searches; plea bargain; community control; reasonable grounds to believe; ripe; invited error.

Even if the trial court erred in imposing random inspections or

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warrantless searches as part of community-control conditions, defendant invited the error when she and her counsel actively participated in plea negotiations that contained an agreed, recommended sentence that included a probation condition of random home inspections by an APL or humane society officer. Whether the APL officer has reasonable grounds to believe that the defendant is not abiding by the terms of community control is not ripe for review.

112449 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSE LUGO-CASIANO

Vacated and remanded.

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

KEY WORDS: R.C. 2921.331; failure to comply; R.C. 4510.02; license suspension; R.C. 2909.04(A)(2); disrupting public services; suspended sentence; sentence contrary to law.

The imposition of a suspended sentence was contrary to law. A court must impose a prison sentence or community control. The imposition of a Class Two license suspension for a felony failure to comply conviction where the defendant had a prior failure to comply conviction was also contrary to law. A Class One suspension is mandatory pursuant to statute.

112466 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ASSUNTA ROSSI PERSONALTY REVOCABLE LIVING, ET AL. v D.J. KEEHAN, ET AL.

Dismissed.

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

KEY WORDS: Civ.R. 56; motion for summary judgment; motion for reconsideration; Civ.R. 54(B); no just reason for delay; R.C. 2505.02(B); final appealable order.

The trial court's denial of a motion to reconsider its grant of partial summary judgment was not a final, appealable order despite a Civ.R. 54(B) certification because it did not dispose of all claims and counterclaims against all parties. A motion to reconsider a non-final order is also a non-final order. Because the trial court's partial grant of summary judgment was not a final order, its denial of the motion for reconsideration was also not a final order. Adding a Civ.R. 54(B) certification did not render the denial of the motion for reconsideration a final, appealable order.

112476 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
PLATINUM RESTORATION CONTRACTORS, INC. v FOWAZ SALTI

Affirmed.

Sean C. Gallagher, J., and Michael John Ryan, J., concur; Mary Eileen Kilbane, P.J., dissents (with separate opinion).

KEY WORDS: Civ.R. 60(B); motion for relief; breach of contract; pro se; trial date; notice; understanding; docket; abuse of discretion; excusable neglect; Civ.R. 60(B)(1); Civ.R. 60(B)(5); catchall.

Affirmed the trial court's decision to deny appellant's motion for relief from judgment under Civ.R. 60(B). The trial court did not abuse its discretion in denying the motion upon finding appellant failed to demonstrate any grounds for relief under Civ.R. 60(B)(1)-(5). Although appellant claimed a lack of notice and a lack of understanding, the pro se defendant's failure to check the docket and to keep informed of the progress of an ongoing case after his attorney withdrew did not qualify as excusable neglect under Civ.R. 60(B)(1), and the catchall provision of Civ.R. 60(B)(5) did not apply.