

September 21, 2023

111533 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JADYN LOGAN

Affirmed.

Decision En Banc:

Eileen A. Gallagher, J.; Anita Laster Mays, A.J.; Lisa B. Forbes, Emanuella D. Groves, Kathleen Ann Keough, Mary Eileen Kilbane, Michael John Ryan, and Michelle J. Sheehan, JJ., concur

Sean C. Gallagher, J., concurs in judgment only (with separate opinion);

Mary J. Boyle, Frank Daniel Celebrezze, III, and Eileen T. Gallagher, JJ., concur in judgment only and concur with Judge Sean C. Gallagher's opinion concurring in judgment only.

Decision of the Merit Panel:

Eileen A. Gallagher, J., and Anita Laster Mays, A.J. concur; Mary J. Boyle, J., concurs in judgment only (with separate opinion).

KEY WORDS: *Attempt; R.C. 2923.02; having weapons while under disability; R.C. 2923.13(A)(2); firearm specification; R.C. 2941.141(A); mandatory prison term; R.C. 2929.13(F)(8); community control; R.C. 2929.15(A)(1); underlying felony; split sentence; plain error.*

The defendant pleaded guilty to attempted having weapons while under disability with a one-year firearm specification. The trial court sentenced her to one year in prison on the firearm specification and two years of community control on the underlying felony. The state appealed, arguing that the trial court was required to impose a mandatory prison term on the underlying felony as a result of the specification, that community control was not an authorized sentence and that the sentence violated the split-sentence doctrine.

The plain and unambiguous language of R.C. 2929.13(F)(8) requires that a trial court, when crafting a sentence for a felony (other than a violation of R.C. 2923.12) that is enhanced with a firearm specification, impose the definite prison term prescribed by R.C. 2929.14(B)(1)(a) as a mandatory prison term. The statute does not require the imposition of a mandatory prison term with respect to the felony underlying the firearm specification.

Where a trial court is not required to impose a prison sentence on an underlying felony, as here, a trial court may impose community-control sanctions on the underlying felony even where prison is mandatory for the accompanying specification. This does not constitute an unlawful "split sentence" because a specification is not part of the underlying offense but merely a sentencing enhancement to that offense.

As the trial court was not required to impose a prison term, mandatory prison term or term of life imprisonment on the defendant on the underlying felony here, R.C. 2929.15(A)(1) authorized the court to impose community-control sanctions on that offense. Sentence affirmed.

CASE DECISION LIST

111851 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
EARTH MOBILE INC. v US BANK NA

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion to intervene; untimely; abuse of discretion; motion in limine; bias; findings of fact and conclusions of law.*

Trial court did not abuse its discretion in denying appellants' motion to intervene because the motion was untimely; trial court's grant of defendant's motion in limine did not demonstrate bias toward appellants because the disputed evidence was inadmissible under Evid.R. 402 and 403 and thus the court did not abuse its discretion in granting the motion; trial court had no duty to make findings of fact and conclusions of law because it did not conduct a trial or decide questions of fact.

111887 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
RYAN LICHTENSTEIN v MELISSA LICHTENSTEIN

112340 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
RYAN LICHTENSTEIN v MELISSA LICHTENSTEIN

Affirmed.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Divorce, temporary support, child support, obligor, income for child support, child tax credit, shared parenting order, attorney fees.*

The trial court did not abuse its discretion regarding temporary support, child support, and attorney fees. Each of the court's findings are supported by evidence in the record. Additionally, appellant did not otherwise demonstrate that the trial court abused its discretion.

Judgment affirmed.

111990 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CORTEZ PARRISH

Affirmed.

Emanuella D. Groves, J.; Mary Eileen Kilbane, P.J., concurs in judgment only; Lisa B. Forbes, J.,

dissents (with separate opinion).

KEY WORDS: *Motion to suppress evidence; weapons while under disability; carrying concealed weapons; public gaming; dice game; detained; marijuana; reasonable suspicion standard; mixed question of fact and law; competent; credible evidence; Crim.R. 12(E); Fourth Amendment; unreasonable searches and seizures; suppression of evidence; fruit of the poisonous tree; reasonableness; nature and quality of the intrusion; investigatory stop; consensual encounter; arrest; investigative detention; minor misdemeanor; protective search; reasonable individualized suspicion; protective search limitation; valid investigatory stop; reasonable articulable suspicion; Terry v. Ohio; investigatory intent; pretext for warrantless evidentiary search; exclusion of evidence.*

Judgment affirmed. *The defendant was indicted for having weapons while under disability and carrying concealed weapons. An officer observed the defendant standing with a group of 15 to 20 men participating in a dice game. The officer observed the defendant with his hand on his side as he headed away from law enforcement. Officers were justified in making an investigatory stop of the defendant based on a reasonable suspicion that he may have participated in gambling, a minor misdemeanor offense. The officers were justified in conducting a protective frisk of the defendant's person because they reasonably believed he might be armed. The state was unable to articulate probable cause to extend the search beyond a protective search for officer safety and the frisk failed to produce evidence of an arrestable offense. The subsequent search exceeded the scope of a lawful frisk, violating the defendant's Fourth Amendment rights. As a result, the trial court properly suppressed the fruit of the search.*

112038	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
SHAWN WEILER v GOOGLE LLC, ET AL.			

Affirmed.

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

KEY WORDS: *Temporary restraining order; reconsideration; motion to dismiss; amended complaint; appellees; claims; time-barred; libel; falsity; defamation index; search results; civ.r. 12(B)(6); app.r. 16(A)(7); restraining order.*

Judgment affirmed. *Appellant disputes the court's denial of his motions for a temporary restraining order and reconsideration. Additionally, appellant challenges the dismissal of his amended complaints against several appellees, based on both procedural grounds and the merits of his claims. Appellant claims that appellees facilitated public access to documents regarding a lawsuit he filed against the government, thereby damaging his employment prospects. Appellant's claims were time-barred and he failed to state a claim upon which relief could be granted.*

CASE DECISION LIST

112042 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN THOMPSON

Reversed and remanded.

Mary Eileen Kilbane, J., Anita Laster Mays, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Crim.R. 33(A)(6); motion for a new trial; recanted testimony; credibility; materiality; abuse of discretion; exculpatory evidence.*

The trial court abused its discretion when it denied appellant's motion for a new trial based on recanted testimony from the victim-witness where the trial court found the victim-witness's trial testimony more credible than their recantation.

112058 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LAVELLE SPENCER

Affirmed.

Eileen T. Gallagher, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Juvenile; adult; sex offender; rape; classification; Tier; adult; sentence; indefinite; as applied; cruel and unusual punishment; bindover; consider; youth offender; sex offender.*

Defendant's automatic classification as a Tier III sex offender was not cruel and unusual punishment under U.S. Constitution, Amendment VIII, and Ohio Constitution, Article I, Section 9, as he was no longer a "juvenile offender" once he was transferred to adult criminal court. The trial court complied with its obligation to carefully consider Spencer's "youth and its characteristics as mitigating factors" pursuant to R.C. 2929.19(B)(1)(b) before imposing a sentence. The Reagan Tokes Law does not violate a defendant's constitutional right to a trial by jury, the separation-of-powers doctrine and due process.

112077 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEAMAUTE EFFORD

112078 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEAMAUTE EFFORD

Affirmed and remanded.

Emanuella D. Groves, J., and Frank Daniel Celebrezze, III, P.J., concur; Sean C. Gallagher, J.,

CASE DECISION LIST

concur (with separate opinion).

KEY WORDS: *Consecutive sentences; constitutionality of Reagan Tokes sentence; error in sentencing entry.*

The trial court erred when it stated in the sentencing entry that the defendant pleaded to, and was convicted of specifications that he was not charged with accordingly, the trial court must correct that error. The Reagan Tokes sentence was not unconstitutional.

The trial court made the appropriate findings to support consecutive sentences. Furthermore, this court may only vacate, modify, or remand a sentence when the record does not clearly and convincingly support the trial court's findings. This court cannot find that the trial court's findings are not clearly and convincingly supported.

112096	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOYCE SWANN			

Affirmed.

Sean C. Gallagher, J., Anita Laster Mays, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Theft; R.C. 2913.02(A)(1); misdemeanor; sufficiency; manifest weight.*

Affirmed conviction for misdemeanor theft. Appellant's conviction was supported by sufficient evidence and was not against the manifest weight of the evidence.

112216	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
NATHAN SANTAMARIA v CLEVELAND CLINIC FOUNDATION, ET AL.			

Affirmed.

Sean C. Gallagher, J., and Anita Laster Mays, A.J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion).

KEY WORDS: *Medical claim; standard of care; dueling experts; directed verdict; Civ.R. 50. Affirmed.*

The trial court properly denied a motion for directed verdict when the issue advanced pertained to the disputed evidence on the breach of the standard of care as presented by both parties' respective experts.

CASE DECISION LIST

112237 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ABV CORPORATION, DBA , ABV CONTRACTORS CO. v NEIL CANTOR, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Michael John Ryan, J., concur.

KEY WORDS: *Breach of contract; contract modification; CSPA; damages; sewer construction; attorney fees; bona fide error.*

Appellee sewer construction company introduced sufficient evidence to demonstrate that the parties' conduct implicitly modified their original contract and that appellant homeowners, by their conduct, waived the no-oral-modification clause. Regarding appellants' counterclaim of CSPA violation against appellee, appellants failed to prove actual economic damages resulting from appellee's CSPA violation. The trial court properly determined that the jury should award \$200 in statutory damages should it find appellee to have violated the CSPA. The jury's finding that the CSPA violation was a bona fide error precluded an award of attorney fees.

112303 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
R.S. v B.A.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Protection order; R.C. 2903.214; Civ.R. 65.1; objection; abuse of discretion.*

After petitioner testified at hearing on protective order pursuant to R.C. 2903.214, respondent asked for a continuance in order to obtain counsel. Magistrate conducting hearing granted a continuance. Thereafter, respondent failed to contact the court or appear for the hearing. Magistrate prepared order of protection that was adopted by the trial court. Respondent, through counsel, filed an objection, arguing that counsel told respondent not to appear. Counsel further did not enter appearance or seek continuance of the hearing. Appellate court could not say trial court did abuse its discretion where respondent's objection did not address the substance of the order or the evidence upon which it was based, but in essence, was a denial of a second request for continuance of hearing.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 7 of 7

112368 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CITY OF BROOK PARK v CITY OF CLEVELAND

Reversed and remanded.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Summary judgment; breach of contract; standing; specific performance; statute of limitations; laches.*

It is undisputed that Cleveland breached its agreement with the city of Brook Park to purchase residential homes in Brook Park in anticipation of the construction of an additional runway for Hopkins Airport. The trial court's decision granting Cleveland's motion for summary judgment in this breach-of-contract action on grounds of standing, statute of limitations, laches, and inequity of specific performance is reversed because genuine issues of material fact remain for determination.

112405 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE B.A.T.

Reversed and remanded.

Eileen T. Gallagher, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Mandatory bindover; probable cause; rules of evidence.*

Juvenile court erred in excluding evidence of juvenile's confession and then concluding that there was no probable cause to believe that the juvenile committed the acts alleged in the complaint.