

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 4, 2024

112286 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DIANA WADLINGTON

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Self-defense; aggravated assault; involuntary manslaughter; abuse of discretion; specific instances of conduct; character evidence; victim's prior conduct; Evid.R. 404(A); Evid.R. 405; provocation; rage; fear; jury instructions; inferior offense; lesser included offense.*

Judgment is affirmed. The trial court did not abuse its discretion when it limited evidence of victim's prior conduct to specific instances known to the appellant that tended to show appellant's state of mind. The trial court did not abuse its discretion when it did not instruct on the inferior offense of aggravated assault or the lesser included offense of involuntary manslaughter because the appellant testified that she shot the victim because she was in fear.

112441 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
701 LAKESIDE, LLC v PINNACLE CONDOMINIUM UNIT OWNERS ASSN., ET AL.

Affirmed.

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

KEY WORDS: *Standing; declaratory judgment; reciprocal easement agreement; condominium instruments; declaration and bylaws; condominium unit owners' association; summary judgment; res judicata.*

The trial court's judgment granting summary judgment to the condominium unit owners' association was affirmed. Appellant was not an interested person under the condominium declaration. Therefore, appellant lacked standing to seek declaratory judgment concerning the relationship between the condominium owners' association and the condominium owners. Appellant's claims pertaining to the reciprocal easement agreements were barred by res judicata.

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112453	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
S. KAREN MACHEN v ALFRED THOMAS MILLER, JR.			
112454	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
S. KAREN MACHEN v ALFRED THOMAS MILLER, JR.			
112479	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
S. KAREN MACHEN v ALFRED THOMAS MILLER, JR.			

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Divorce; abuse of discretion; res judicata; de facto termination of marriage date; Evid.R. 611(A); one-day trial; parties' income; spousal support; witness credibility; division of property; double-dipping; student-loan debt; attorney fees; findings of fact and conclusions of law; failure to grant stay pending appeal; qualified domestic relations order.*

Divorce case is affirmed in part, reversed in part, and remanded to the trial court for further proceedings. The court abused its discretion by using the date of the final hearing as the termination of marriage date. An abundance of evidence in the record showed that a de facto date three years prior to the final hearing date should be used as the termination of marriage date, when parties met all ten of the factors used to determine this date. From there, spousal support, division of property, division of debt, and the qualified domestic relations order regarding retirement assets needed to be recalculated using the de facto termination of marriage date. Furthermore, a marital asset that was split equally should not also be tacked on to one party's annual income for spousal support purposes. This is referred to as double-dipping. The court awarded attorney fees to the husband based on the wife's alleged misconduct of delaying the trial, misrepresenting her income, and concealing assets. All of these allegations are unsupported by evidence in the record, and the court erred by awarding attorney fees.

112485	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v SOUTHWEST INVESTMENTS LLC			
112486	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v SOUTHWEST INVESTMENTS LLC			
112683	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v SOUTHWEST INVESTMENTS LLC			

Affirmed.

Frank Daniel Celebrezze, III, J.; Eileen T. Gallagher, P.J., concurs in judgment only (with separate

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opinion); Mary J. Boyle, J., concurs with the separate concurring in judgment only opinion.

KEY WORDS: *Building Code violation; community-control sanctions; community-control violation; res judicata; voidable; sentences; judgment of conviction; violation of community control; financial sanctions; mootness.*

Judgment affirmed. *The trial court's imposition of a community-control sanctions violation in the amount of \$25,000 was not an abuse of discretion because defendant was given proper notice of the consequences of violating community control and the \$25,000 fine was authorized by statute. We are unable to review defendant's challenge to the community-control sanction banning appellant from selling, gifting, or transferring his properties because such argument is barred by res judicata. We are also unable to review defendant's error alleging that the trial court should have granted his motion to stay the fine pending appeal because this court granted defendant such relief after the instant appeal was filed in this court.*

112622	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
ADRIANA GRANADA v ISRAEL ROJAS			

Affirmed.

Frank Daniel Celebrezze, III, J., Eileen A. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Divorce; final decree; business valuation; fair market value of business; expert witnesses; manifest weight; spousal support; tax responsibility.*

Affirmed. *Plaintiff-appellant Adriana Granada appeals her final divorce decree, arguing that the trial court erred in its valuation of the family business and in accepting defendant-appellee Israel Rojas's expert witness in making such valuation. Granada also contests the trial court's decision to refrain from awarding spousal support as well as the trial court's failure to address any potential tax liability. Granada's assigned errors are without merit and overruled.*

112644	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
S. KAREN MACHEN v ALFRED THOMAS MILLER, JR.			

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *See companion cases Machen v. Miller, 8th Dist. Cuyahoga Nos. 112453, 112454, and 112479*

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112695 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v 3006 MONTCLAIR AVE., LLC

Modified and remanded.

Eileen A. Gallagher, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Standing; housing code violations; terms and conditions of community control; separate and distinct legal entities.*

Appellant had standing to challenge housing court's order on appeal only to the extent that the order injuriously affected appellant, not to assert the rights of third parties. Housing court erred and abused its discretion to the extent that it imposed restrictions or requirements relating to properties owned by other entities as a term or condition of appellant's community control.

112701 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ASHLEY GAINES

Affirmed.

Emanuella D. Groves, J., and Mary Eileen Kilbane, P.J., concur; Lisa B. Forbes, J., concurs with the majority on assignments of error Nos. 2 and 3 and concurs in judgment only on assignment of error No. 1.

KEY WORDS: *Instagram; authentication; evidentiary foundation; ineffective assistance of counsel; Bruton rule; manifest weight of the evidence; R.C. 2903.11(A); Evid.R. 901; video evidence; Evid.R. 801(D)(2); jury; procedural history; witness testimony.*

Defendant-appellant contested her convictions for felonious assault. The trial court erred when it admitted social media evidence without proper authentication; however the error was harmless. Instagram messages attributed to testifying codefendant were admissible. Appellant failed to prove that counsel's performance was both deficient and that this deficiency prejudiced the defense. Convictions affirmed.

112710 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JERMAINE KEMP

Affirmed.

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

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(Case 112710 continued)

KEY WORDS: Ineffective assistance of counsel, self-defense, R.C. 2901.05(B)(1), manifest weight.

Appellant's trial counsel was not deficient when he did not argue self-defense because there was no evidence in the record to support such a claim. Appellant's convictions were not against the manifest weight of the evidence. The testimony from the surviving victim was corroborated by physical evidence, witness testimony, and 911 calls.

112711	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DARON ARMSTRONG			

Affirmed in part; reversed in part; and remanded.

Anita Laster Mays, J., Kathleen Ann Keough, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Sufficiency of the evidence, weight of the evidence, jail-time credit, R.C. 2929.19(B)(2)(g)(i)-(ii), Reagan Tokes Law.

Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. A trial court is empowered under R.C. 2929.19(B)(2)(g)(i)-(ii) to consider the arguments of the parties at the sentencing and conduct a hearing if requested to determine the proper amount of jail-time credit to which a prisoner is entitled. Application of the Reagan Tokes Law to qualifying sentences is mandatory.

112887	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
MEGAN COLOSIMO BEYER v JAMES S. BEYER, JR.			

112912	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
MEGAN COLOSIMO BEYER v JAMES BEYER, JR.			

Affirmed in part, vacated in part, and remanded.

Sean C. Gallagher, J., and Eileen T. Gallagher, J., concur; Kathleen Ann Keough, A.J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: Divorce action; separate property; R.C. 3105.171; wages; marital funds; child support; gross earnings; income; mutual restraining order; cash medical support.

Affirmed in part. The domestic relations court did not err in finding that the marital home was Husband's separate property despite evidence that the mortgage, expenses, and upkeep of the property were paid from commingled funds; the appellant has failed to demonstrate that the domestic relations court abused its discretion in calculating child support; the domestic relations court did not

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(Case 112912 continued)

abuse its discretion in finding that Wife violated the domestic relations court's mutual restraining order by not paying a utility bill for the marital home during the pendency of the divorce proceedings; domestic relations court erred in not calculating a 10 percent downward deviation in Husband's child support obligation; domestic relations court abused its discretion in ordering Husband to pay Wife cash medical support because the parties agreed in the shared parenting plan to split the children's medical expenses equally; domestic relations court did not abuse its discretion in determining the effective date of Husband's child support obligation.

112981 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DERRICK MAXEY

Affirmed.

Anita Laster Mays, J., Eileen A. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: R.C. 2903.01(A), aggravated murder; sufficiency of the evidence, Evid.R. 403, prejudicial photographs; bench trial; denial of request for new appointed counsel.

Viewing the evidence in a light most favorable to the prosecution, the evidence was sufficient to support the essential elements of aggravated murder beyond a reasonable doubt. The trial court's allowance of multiple autopsy photographs did not constitute an abuse of discretion. In a bench trial, an appellate court presumes that the trial court relied on material, relevant, competent evidence in reaching a judgment. Appellant failed to demonstrate proper grounds for the appointment of new counsel.

113050 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
NORTH ROYALTON ROYAL COURT CONDO OWNERS' ASSOC. v CHARLES R. STADUL, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., and Anita Laster Mays, J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: Foreclosure; tax certificates; liens; praecipe for order of sale; slander of title.

To prevail on a claim of slander of title, a plaintiff must prove (1) there was a publication of a slanderous statement disparaging claimant's title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages. Intervenor-appellant's claim of slander of title based on the tax

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(Case 113050 continued)

certificates recorded by cross-claimant-appellee and the praecipe for order of sale the latter filed to collect the remaining balance on the tax certificates cannot be established under the unique circumstances of this case.

113060 BEDFORD MUNI. C Criminal Muni. & City
CITY OF BEDFORD HEIGHTS v ROMAINE T. DAVIS

Reversed and vacated.

Michelle J. Sheehan, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Traffic stop; obstructing official business; overt act; insufficient evidence.

Appellant was convicted of obstructing official business based on the officer's testimony that he refused to identify himself or provide his driver's license during a traffic stop. However, one cannot be guilty of obstructing official business by doing nothing because the text of R.C. 2921.31, which defines the offense of obstructing official business, specifically requires an offender to act. The mere refusal to answer a police officer's questions regarding one's identity cannot support a conviction for obstructing official business. Because the limited testimony elicited from the officer by the prosecutor did not reflect that appellant engaged in an overt act, appellant's conviction of obstructing official business is vacated for insufficient evidence.

113102 CLEVELAND MUNI. G Civil Muni. & City
PORTFOLIO RECOVERY ASSOCIATES LLC v MARIAH CRENSHAW

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Debt collection; final appealable order; Civ.R. 4; Civ.R. 56; Civ.R. 58; Civ.R. 60; motion for summary judgment.

Affirmed. Appellate courts lack jurisdiction to review an untimely appeal of a final judgment, and appellant cannot use a motion for relief for judgment under Civ.R. 60(B) as a substitute for that untimely appeal.

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113227 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.P., ET AL.

113230 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.K.

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Termination of parental rights; clear and convincing evidence; court findings.*

The trial court's findings were supported by clear and convincing evidence in the record when it terminated appellants' parental rights. Specifically, the court's finding pursuant to R.C. 2151.414(E)(1) was supported because while appellants each completed case plan services at one point during the pendency of the case, evidence in the record demonstrated that they did not benefit from those services and, therefore, the issues that lead to the children's removal remained to be an issue for each of the appellants.

Judgment affirmed.

113249 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
DENNIS ZDOLSHEK v AGZ PROPERTIES, LLC

Reversed and remanded.

Eileen A. Gallagher, P.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Dismissal of complaint; doctrine of lis alibi pendens.*

Trial court erred in dismissing complaint based on the doctrine of lis alibi pendens where second action was filed in the same court and involved different claims seeking different relief than those asserted in the first action.

113510 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN THOMPSON

Affirmed.

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

KEY WORDS: *Trial court; dismissal; without prejudice; prejudice;*

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(Case 113510 continued)

recantation; constitutional; Crim.R. 48.

The trial court did not err by dismissing the defendant's case without prejudice.