

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 9

August 1, 2024

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; 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.

112768 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v XAVIER LORENZANA

Affirmed; remanded.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Drug possession; drug trafficking; motion to suppress; drugs; search of hotel room; warrant; consent; effective assistance of counsel; concession by defense counsel; sufficiency; manifest weight; random sampling method; speedy trial; plain error; statutory right; constitutional right; Barker factors; sentence; consecutive; Reagan Tokes; waiver; fine; indigent.*

Judgment affirmed; remanded. The trial court properly denied appellant's motion to suppress. The appellant did not have a reasonable expectation of privacy to the hotel room because he had three active warrants for his arrest, the hotel affirmatively acted to evict the appellant, the police had knowledge that the appellant was evicted, and the police had a reasonable belief that the appellant was in the hotel room. Defense counsel was not deficient. Defense counsel's concessions on the lesser counts was an attempt to gain the jury's credibility with this concession while attacking the drug testing procedure as it pertained to the other counts, which are first-degree felonies. The drug expert's testimony regarding the random sampling method sufficient to support his determination that the entire 940 pills recovered together and similarly packaged are the same controlled substance as that tested - fentanyl.

CASE DECISION LIST

(Case 112768 continued)

Furthermore, the convictions are not against the manifest weight of the evidence. Appellant's speedy trial argument can only be reviewed for plain error regarding his constitutional rights because appellant failed to raise it at the trial court. A review of the record reveals that the Barker factors weigh more heavily in favor of the State. Therefore, the appellant cannot demonstrate plain error. Lastly, appellant's consecutive sentence was proper and the trial court properly advised appellant of the Reagan Tokes requirements. However, because the trial court assessed the mandatory \$10,000 fine after finding appellant indigent and waiving the fine, we remand to the trial court for the sole purpose to correct the sentencing entry to reflect that the mandatory \$10,000 fine was waived.

113001 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL R. SHIELDS v OHIO BUREAU OF WORKERS' COMPENSATION, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Mary J. Boyle, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Motion for sanctions, abuse of discretion, record on appeal, presumption of regularity.*

Plaintiff appealed the trial court's denial of his post-dismissal motion for sanctions for defense counsel's conduct during depositions. Plaintiff and defendant both referenced discussions with the trial court and the trial court's instructions. These proceedings were not contained in the appellate record. Because of the incomplete record, appellate court presumed regularity in the proceedings and could not find the trial court abused its discretion by denying plaintiff's motion for sanctions without holding a hearing.

113016 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
GIFTED A. GARRETT v DEREK JACKSON

Reversed and remanded.

Eileen T. Gallagher, J., Kathleen Ann Keough, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Right to jury trial; Civ.R. 38; Civ.R. 5(D); jury demand; right to testify; Evid.R. 103(A)(2); proffer; App.R. 16(A)(7).*

Trial court denied appellant of his right to testify in a civil proceeding where the denial of his testimony violated due process and the substance of the excluded testimony was apparent from the context of appellant's argument and other testimony.

Appellant failed to demonstrate error resulting from appellees' untimely production of receipts at a damages hearing where

CASE DECISION LIST

(Case 113016 continued)

appellant failed to object to the admission of the evidence and the evidence was provided to appellant in appellees' motion for summary judgment.

113089 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALEXANDER PETERSON

Affirmed.

Michelle J. Sheehan, P.J., Mary J. Boyle, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Rape, sufficient evidence, manifest weight of the evidence, admission of evidence, abuse of discretion, hearsay, opinion testimony, consecutive sentences.*

Defendant was convicted of two counts of rape, one count of gross sexual imposition, and one count of endangering children. The verdicts were based on sufficient evidence through the testimony of the victim. The convictions were not against the manifest weight of the evidence because the victim delayed disclosure for three years where she could not leave the home. Further the victim's testimony was not so incredible as to undermine its weight. The trial court did not abuse its discretion by allowing a recording of the victim's mother because it was nontestimonial hearsay not offered for the truth of the statements. The trial court did not abuse its discretion by allowing a social worker to testify as to the manner in which child victims disclose sexual assaults and their reasons for delaying disclosure. Finally, the trial court made the findings to impose consecutive sentences and it cannot be said that the record clearly and convincingly does not support the imposition of consecutive sentences.

113126 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DARRYL HUDSON v FPT CLEVELAND LLC, ET AL.

113375 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DARRYL HUDSON v FPT CLEVELAND LLC, ET AL.

Affirmed.

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

KEY WORDS: *Motion for summary judgment; Civ.R. 56; pro se plaintiff; R.C. Ch. 4112; McDonnell Douglas test; racial discrimination; failure to hire; termination; disparate treatment; retaliation; hostile workplace; totality of the circumstances; Universal Declaration of Human Rights; joint employers; Civ.R. 60(B); R.C. 4112.06; motion to strike; harmless error.*

The evidence demonstrated that plaintiff-appellant did not apply for

(Case 113375 continued)

a position as a railroad switcher and, thus, we could not find defendants-appellees failed to hire plaintiff-appellant in that position. The evidence supported a grant of summary judgment where plaintiff-appellant's promotion negated his claim that the defendants-appellees failed to hire him. Because plaintiff-appellant did not show a comparable, nonprotected person was treated more favorably than him, plaintiff-appellant could not establish a prima facie case of racial discrimination following termination. Plaintiff-appellant's allegation of disparate treatment lacked merit where he did not establish that the defendants-appellees treated him differently from similarly situated individuals. Plaintiff-appellant's retaliation claim failed because the evidence showed his termination was directly related to his violation of work rules when he was found sleeping on the job rather than due to unrelated work complaints presented by plaintiff-appellant. Plaintiff-appellant's race-based hostile workplace claim failed because the totality of the circumstances did not establish a workplace permeated with discriminatory intimidation, ridicule, or insult that created an abusive work environment.

The Universal Declaration of Human Rights is not enforceable in American courts and, thus, plaintiff-appellant's claim on this issue was subject to summary judgment. The trial court did not err when it denied plaintiff-appellant's Civ.R. 60(B) motion. Plaintiff-appellant failed to initiate a filing of a petition under R.C. 4112.06 and, therefore, we declined to review the related claim. The trial court's ruling on plaintiff-appellant's motion to strike before plaintiff-appellant filed a reply brief was at most harmless error.

113193 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CONSTANTINE BITOUNIS, ET AL. v INTERACTIVE BROKERS, LLC, ET AL.

Reversed and remanded.

Anita Laster Mays, J., and Emanuella D. Groves, J., concur; Lisa B. Forbes, P.J., dissents (with separate opinion).

KEY WORDS: *Civ.R. 12(B)(6), failure to state a claim; R.C. Chapter 1707, Ohio Securities Act; R.C. 1707.43(A), remedies of purchaser in unlawful sale of securities.*

Appellants contended that appellees actively participated in and aided another in making unlawful sales of illegal securities in violation of R.C. 1707.43(A). Construing all inferences in a light most favorable to the appellants, the allegations set forth in the complaint were legally sufficient to set forth a claim for relief under R.C. 1707.43(A).

CASE DECISION LIST

113206 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SHURON COLVIN

Affirmed.

Michelle J. Sheehan, J., and Kathleen Ann Keough, A.J., concur; Anita Laster Mays, J., concurs in judgment only.

KEY WORDS: *Crim.R. 11(C)(2)(a) maximum penalty; indefinite sentence; prejudice; motion to withdraw plea; abuse of discretion.*

Defendant entered into a plea agreement that included an indefinite sentence. Although the trial court did not fully comply with Crim.R. 11(C)(2)(a)'s requirement that it inform defendant of the maximum penalty that could be imposed on the indefinite sentence, it explained how the indefinite sentence would be calculated. Defendant did not demonstrate prejudice where he understood the agreed prison sentence would include an indefinite sentence. The trial court did not abuse its discretion by denying defendant's motion to withdraw plea in which he asserted actual innocence where defendant was represented by competent counsel, was afforded a full plea hearing, entered into the plea with an agreed sentence, and the trial court held a hearing on the motion to withdraw and gave full consideration to the arguments made.

113398 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MICHAEL BROWN

Affirmed.

Anita Laster Mays, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *R.C. 2929.21, purposes of misdemeanor sentencing.*

Appellant has not overcome the presumption that the trial court considered the requisite statutory factors. The sentence is within the statutory limits and the sentencing entry provides that the trial court considered all required factors of the law. The trial court did not abuse its discretion.

113425 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BRANTLEY, INC., ET AL. v TODD W. TORNSTROM, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; standing; real party in interest;*

CASE DECISION LIST

(Case 113425 continued)

admission; pleading; attorney fees; block-billing; fee shifting; expert report; untimely; proof; damages; breach of contract.

Appellants waived defenses of standing and real party in interest by failing to timely raise the defenses.

Fee-shifting agreement was enforceable where parties had equal bargaining power, the terms were freely negotiable, and the provision did not promote illegal acts or act as penalty.

Although block-billing in attorney-fee bills is not a best practice, it is not per se illegal and attorney fees may be awarded if the court can determine they are reasonable.

Appellants were not prejudiced by late production of attorney-fee expert report where appellees' counsel could have testified to the reasonableness of attorney fees if the expert had been excluded.

113438 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTONIO BATES

Affirmed.

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

KEY WORDS: *Ineffective assistance of counsel; Strickland v. Washington; defense strategy; cross-examination; failure to object; closing argument; manifest weight of the evidence; inconsistent testimony; allied offenses of similar import; merger; R.C. 2941.25; plain error; sufficiency of the evidence; gross sexual imposition; sexual contact; kidnapping; remove.*

Defendant-appellant did not receive ineffective assistance of counsel where trial counsel stipulated to defendant-appellant's prior conviction for a sex offense against a young girl as a deliberate aspect of their trial strategy. It was not ineffective for trial counsel not to object to statements made during the assistant prosecuting attorney's closing argument. Defendant-appellant's convictions were not against the manifest weight of the evidence and were supported by sufficient evidence. It was not plain error for the trial court to decline to merge the kidnapping and gross sexual imposition convictions.

113480 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
NAIMAN RICHMOND PROPERTIES, LTD v BRAND CASTLE, LLC

Affirmed.

Frank Daniel Celebrezze, III, J., Mary J. Boyle, P.J., and Michael John Ryan, J., concur.

CASE DECISION LIST

(Case 113480 continued)

KEY WORDS: Lease agreement; contract interpretation; commercial lease; damages; commercial duty to mitigate; breach of contract.

Judgment affirmed. In the lease agreement for a commercial space that landlord and tenant signed indicated the damages that landlord was entitled to in the event that tenant defaulted on the agreement. Tenant breached the lease agreement and is therefore responsible for the damages agreed to in the lease agreement. Tenant also did not meet its burden demonstrating that the landlord failed to mitigate the damages incurred.

113482 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v MARKEETA POYTHRESS

Affirmed.

Kathleen Ann Keough, A.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Hit/skip; Cleveland Cod.Ord. 435.16; R.C. 2929.28; failing to stop after an accident; proximate cause; abuse of discretion; motion to deny restitution.*

The trial court did not abuse its discretion in denying appellant's motion to deny restitution and ordering appellant to pay restitution. R.C. 2929.28 allows a trial court to impose restitution for economic loss suffered by the victim as a direct and proximate result of the commission of the offense to which the defendant pled guilty, and the trial court found that the damage to the victim's car was the direct and proximate result of appellant hitting the victim's car before she left the scene of the accident, in violation of Cleveland Cod.Ord. 435.16, the offense to which appellant pled guilty.

113484 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEVIN LEDLOW

Affirmed.

Frank Daniel Celebrezze, III, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Strangulation; R.C. 2903.18; attempt; attempted strangulation; R.C. 2923.02; knowingly; sufficiency of the evidence; manifest weight of the evidence.*

Judgment affirmed. Appellant Ledlow's challenges to the sufficiency and manifest weight of the evidence relating to his attempted-strangulation conviction pursuant to R.C. 2903.18 and 2923.02 are overruled. The record contained sufficient evidence to support a finding that Ledlow attempted to strangle the victim, and the conviction was not against the manifest weight of the evidence in the record.

CASE DECISION LIST

113506 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MARVIN LEE SCOTT, III

Affirmed.

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

KEY WORDS: *Postconviction petition; untimely; R.C. 2953.23(A); App.R. 12; App.R. 16.*

Appellant's untimely postconviction petition was properly denied by the trial court. The court was not required to issue findings of fact and conclusions of law on an untimely petition. Although the appellant raised arguments in his appeal that he did not assign as error in accordance with App.R. 12 and 16, we use our discretion to consider his claims and find them to be without merit.

113547 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: Z.L.

Dismissed.

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

KEY WORDS: *Vacate; child support; final; affect; substantial right; ambiguous; obligations; jurisdiction.*

The appellate court lacked jurisdiction to review appellant's appeal because the December 5, 2023 judgment was not a final, appealable order under R.C. 2505.02 and Civ.R. 54(B).

113548 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: T.T.

Affirmed.

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

KEY WORDS: *Permanent custody; trial; pro se; right to counsel; R.C. 2151.353; Juv.R. 4(A); waived; circumstances; continuance; appointed counsel; plain error; R.C. 2151.414(B)(1)(d); harmless error; R.C. 2151.414(B)(1)(a); R.C. 2151.414(E); best interest; R.C. 2151.414(D)(1); clear and convincing; sufficiency; manifest weight.*

Affirmed the juvenile court's judgment granting permanent custody of the child to the agency and terminating father's parental rights. The totality of circumstances demonstrated that father waived his right to counsel for the first day of trial and chose to proceed pro

CASE DECISION LIST

(Case 113548 continued)

se, and reversal under the plain-error doctrine was not warranted when father was appointed counsel for the second day of trial and was afforded the opportunity to present his case through counsel. Although the juvenile court erred in making a finding pursuant to R.C. 2151.414(B)(1)(d), the error was harmless when R.C. 2151.414(B)(1)(a) was also found to apply. The evidence was legally sufficient to support the juvenile court's decision, and the court's decision was not against the manifest weight of the evidence.

113555	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MARC HORNACKY			

Affirmed.

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

KEY WORDS: *Guilty pleas; sentences within statutory range; purposes and principles of felony sentencing; R.C. 2929.11; R.C. 2929.12; ineffective assistance of counsel.*

Judgment affirmed. *The defendant's sentence fell within the statutory range for each offense and the trial court considered both the purposes and principles of felony sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. Thus, the sentence is not contrary to law.*

The defendant has failed to demonstrate that there was a reasonable probability that, based on counsel's alleged deficient performance, he would not have pleaded guilty and insisted on going to trial instead.