

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 8, 2024

111932 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ST. VINCENT CHARITY v MICHAEL PALUSCSAK

Affirmed.

Anita Laster Mays, J., and Michelle J. Sheehan, P.J., concur; Sean C. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *Summary judgment; standing; FDCPA; OCSPA; motion to compel.*

The trial court did not err by granting the appellees' motions for summary judgment as the appellant lacked standing to bring his counterclaims under FDCPA and OCSPA. The trial court did not err by denying the appellant's motion to compel discovery.

112467 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTONIO Z. OTEN, JR.

Affirmed.

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

KEY WORDS: *Sufficiency of the evidence; venue; guilty plea; complete admission of guilt; waiver.*

Appellant's plea of guilty constituted a waiver of any sufficiency-of-the-evidence challenge and any challenge to the factual issue of venue.

112607 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KIMBERLEE A. GERSTON, TRUSTEE, ET AL. v PARMA VTA, LLC, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, J., and Mary J. Boyle, P.J., concur; Anita Laster Mays, J., dissents (with separate opinion).

KEY WORDS: *Jury trial; breach of contract; breach of fiduciary duty; motion for judgment notwithstanding the verdict; commercial property; commercial real estate.*

Judgment affirmed. The jury's verdicts as to breach of contract and breach of fiduciary duty were supported by the evidence received at trial. Moreover, since the jury did not find breach of contract, any

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argument pertaining to the calculation of damages is irrelevant. Additionally, the trial court did not err in its evidentiary rulings during the trial.

113011 LAKEWOOD MUNI. C Criminal Muni. & City
CITY OF LAKEWOOD v ANGEL JONES

Affirmed.

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

KEY WORDS: Aggravated menacing; R.C. 2903.21(A); sufficiency of the evidence; knowingly.

Evidence was sufficient to support defendant's conviction for aggravated menacing in violation of R.C. 2903.21(A) because viewing the evidence in a light most favorable to the city, a rational trier of fact could have found the essential elements of aggravated menacing proven beyond a reasonable doubt. Trial judge's comments, when explaining the reasoning behind its verdict, relating to his uncertainty regarding defendant's mens rea did not preclude a guilty verdict.

113019 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CITY OF SHAKER HTS. EX REL. FRIENDS OF HORSESHOE LAKE, ET AL. v
CITY OF SHAKER HEIGHTS, OHIO, ET AL.

113020 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CITY OF CLEVE. HTS. EX REL FRIENDS OF HORSESHOE LAKE, ET AL. v
CITY OF CLEVELAND HEIGHTS, OHIO

Affirmed.

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

KEY WORDS: Motion to dismiss; de novo; Civ.R. 12(B)(1); Civ.R. 12(B)(6); moot; standing; taxpayer action; R.C. 733.56; R.C. 733.57; R.C. 733.59; App.R. 16(A)(7); waiver.

Judgment affirmed. The trial court did not err in granting the cities' motion to dismiss the taxpayers' actions for lack of subject-matter jurisdiction and failure to state a claim pursuant to Civ.R. 12(B)(1) and 12(B)(6).

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113085 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v TIFFANY GARDNER

Affirmed.

Lisa B. Forbes, P.J., Emanuella D. Groves, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Petition for postconviction relief; murder; aiding and abetting; pro se litigants; res judicata.*

Pro se defendant's arguments in her petition for postconviction relief are barred by the doctrine of res judicata, because they were or could have been raised in the direct appeal of her murder conviction.

113113 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
EDMUND GUDENAS v JONAS ALGIS GUDENAS, SUCCESSOR TRUSTEE, ET AL.

113114 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
EDMUND GUDENAS v JONAS ALGIS GUDENAS, SUCCESSOR TRUSTEE, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Probate; breach of fiduciary duty; unjust enrichment; trusts; estates; margin loan; investment accounts; estate division; statute of limitations; expert report deadlines; exclusion of expert report.*

In a dispute between two brothers pertaining to the division of their father's estate and contents of a trust, the probate court did not err in finding that appellant Edmund Gudenas had been unjustly enriched in the amount of \$129,840.99 and the probate court's calculation arriving at this number is supported by competent, credible evidence in the record. Moreover, the probate court correctly made determinations regarding the tolling of the statute of limitations and properly excluded appellant's expert report when appellant did not submit the expert report by the probate court's deadline.

113235 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v M. T.-R.

Affirmed.

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

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KEY WORDS: Sufficiency; manifest weight; uncorroborated witness; improbable; bifurcate; joinder; rape; sexual battery; gross sexual imposition.

There was sufficient evidence that defendant raped and sexually assaulted his stepdaughter despite the use of minimal force where stepdaughter was dependent on stepfather and stepfather used his position of authority to force stepdaughter to comply.

Defendant's convictions were not against the manifest weight of the evidence even though the victim's testimony was contradicted by the testimonies of her mother and sister where evidence showed that mother and sister had reasons to lie in the defendant's favor.

The trial court's failure to bifurcate counts alleging sexual offenses against two different victims did not unfairly prejudice the defendant where the evidence as to each offense was separate and distinct.

113254 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICHARD MCQUISTION

Affirmed.

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

KEY WORDS: *Crim.R. 29 motion for acquittal; furthermore clause; domestic violence; evidence of prior conviction; rape; sufficiency of the evidence; ineffective assistance of counsel.*

There was sufficient evidence in the record to support the defendant's convictions for rape and domestic violence, notwithstanding his admission of a prior domestic-violence conviction.

113272 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MARIA GARCIA v ABDELJAWAD EWAIS, ET AL.

Reversed in part; affirmed in part; and remanded.

Anita Laster Mays, J., and Mary Eileen Kilbane, P.J., concur; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: *Easement by estoppel, fraud.*

Appellant has clearly and convincingly established entitlement to an easement by estoppel that applies where "an owner of land, without objection, permits another to expend money in reliance upon a supposed easement, when in justice and equity the former ought to have disclaimed his or her conflicting rights." The trial court's

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judgment is reversed in part and remanded. The remainder of the judgment is affirmed.

113314 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TIMOTHY SMITH

Affirmed.

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

KEY WORDS: Gross sexual imposition; guilty plea; amended indictment; waiver of indictment pursuant to Crim.R. 7; invited error.

The defendant pled guilty to an amended indictment without presenting the amended indictment to a grand jury. This because he was represented by counsel, he bargained for the amendment, and he was not prejudiced because he gained a benefit by pleading to lesser counts than originally indicted. Furthermore, he failed to show that he did not understand the nature of the charge to which he pled guilty.

113379 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KELLY A. JONES

Affirmed.

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

KEY WORDS: Repeat violent offender specification; Reagan Tokes Law.

Judgment affirmed. The trial court considered the appropriate recidivism and seriousness factors, made the required findings, gave the necessary reasons for its findings, and properly applied the statutory guidelines before sentencing the defendant on the repeat violent offender specification.

The defendant's arguments regarding the constitutionality of the Reagan Tokes Law do not present novel issues or any new theory left unaddressed by the Ohio Supreme Court's decision in State v. Hacker, 2023-Ohio-2535.

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113391 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RUTH GILLETT, ET AL. v CUYAHOGA COUNTY

Reversed and remanded.

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

KEY WORDS: *Judgment of the pleadings; equal protection clause; rational-basis test.*

The trial court erred by granting judgment on the pleadings to Cuyahoga County on the Equal Protection claims alleged by the appellants in their complaint because the county's enactment of Cuyahoga County Ord. 02021-0004 is not rationally related to a legitimate governmental purpose.

113457 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID BAKER

Vacated.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Postrelease control; R.C. 2929.191; jurisdiction; void judgment; resentencing.*

Judgment vacated. Under the unique facts of this case, trial court lacked jurisdiction to hold the 2019 resentencing hearing regarding postrelease control, which rendered the appeal moot.

113463 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v D'VAUN PRICE

113464 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v D'VAUN PRICE

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Crim.R. 11; constitutional protections; right against compulsory self-incrimination; inconsistent verdicts.*

Appellant appealed in two cases. In the first case, the State concedes that the trial court inadvertently failed to advise appellant of his right against compulsory self-incrimination during his plea colloquy in violation of Crim.R. 11. Judgment reversed.

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(Case 113464 continued)

In the second case, although appellant was convicted of charges that his codefendant was acquitted of, the verdicts were not inconsistent. There were two victims and appellant's actions were against one victim while his codefendants actions were against another victim. Even if the verdicts were inconsistent this court has held that inconsistent verdicts between codefendants is not a sufficient reason for reversing a conviction.

113513 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERROL BANKSTON

Affirmed.

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

KEY WORDS: Postrelease control, R.C. 2943.032, R.C. 2929.19(B), R.C. 2967.28, Crim.R. 11, sentencing, plea.

Judgment affirmed. Bankston's plea was knowingly, intelligently, and voluntarily entered because the trial court properly advised Bankston of the sanctions he faced if he violated PRC at both the plea and sentencing hearing.

113570 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CITY OF CLEVELAND v STATE EMPLOYMENT RELATIONS BOARD, ET AL.

Affirmed.

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

KEY WORDS: Assignment of bargaining unit rights to non-bargaining unit employees; waiver by union to bargain; 4117.08; bad-faith; ripeness for review.

City adopted plan to hire part-time employees who would perform union work but not be members of union and took steps to hire those part-time employees. The City presented the plan to the union and maintained the position that it did not have to bargain with union over plan. Union discontinued meetings with City and filed unfair labor practice complaint with SERB. SERB held hearing and found City committed unfair labor practice and negotiated in bad faith.

In overruling City's assigned errors in its administrative appeal, the trial court did not abuse its discretion in determining union did not explicitly waive the right to bargain the hiring of part-time employees who would be assigned bargaining unit work. The trial court did not abuse its discretion by determining that union did not waive its right to bargaining by discontinuing meeting with City

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(Case 113570 continued)

because of City's continued position that it was not required to bargain. Because the issue of reassignment of bargaining unit work to non-bargaining unit employees has long been held to require negotiation, City's continued refusal acknowledge a duty to bargain, the trial court cannot be said to have abused its discretion by finding the City did not bargain in good faith. The trial court did not abuse its discretion by finding that City's steps to hire employees made the issue of assignment of bargaining unit work to non-bargaining unit employees a present and imminent concern ripe for review.

113585 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
LINDA M. BUTORAC v HUGH OSMIC

Affirmed.

Frank Daniel Celebrezze, III, J., Michelle J. Sheehan, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Law-of-the-case doctrine; res judicata; final, appealable order; finality of judgments.*

Judgment affirmed. *Appellant's attempts to "quash" his direct appeal that had already been decided based on a lack of a final, appealable order fails under the law-of-the-case doctrine, res judicata, and upon the merits.*

113628 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: Z.F.

113629 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: E-Z. F.

Affirmed.

Anita Laster Mays, J., Lisa B. Forbes, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Permanent custody; manifest weight of the evidence; R.C. 2151.414(E); best interest of the child.*

The trial court's decision to grant permanent custody to CCDCFS is not against the weight of the evidence under R.C. 2151.414(E) and is in the best interest of the children.

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113693 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ROBERT PLAZA v NIKITA ROBERTS, ET AL.

Dismissed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Complaint; failure to state a claim; Civ.R. 12(B)(6); motion for relief from judgment; Civ.R. 60(B); timeliness; App.R. 4; bootstrapping.*

Appeal dismissed as untimely where the appellant failed to timely appeal an order dismissing his complaint with prejudice pursuant to Civ.R. 12(B)(6). While the appellant filed a Civ.R. 60(B) motion seeking relief from the order, and his appeal was timely from the denial of that motion, a Civ.R. 60(B) motion is not a substitute for an appeal. Where each of the assignments of error went solely to the trial court's original dismissal of the appellant's complaint, the assignments were improperly "bootstrapped" into this appeal. We have no jurisdiction to consider "bootstrapped" assignments of error.

113746 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
SURINDER DHILLON v JAGBIR SINGH DHILLON

Affirmed.

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

KEY WORDS: *Divorce; motion for contempt; separation agreement; affirmative defense of laches; magistrate's decision; plain error.*

There was no plain error where the trial court adopted the magistrate's decision applying the affirmative defense of laches and denying husband-appellant's motion for contempt.

113851 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIE HICKS

Reversed and remanded.

Emanuella D. Groves, J., Eileen A. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Conceded error; law-of-the-case doctrine; mandate rule.*

Judgment reversed and remanded in this conceded-error appeal. A prior appeal reversed the trial court's granting of the defendant's

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motion to dismiss and remanded the matter so that the trial court could apply the correct legal standard when ruling on the defendant's motion to suppress. Thus, the law of the case and the mandate rule required only that the trial court revisit the defendant's motion to suppress on remand. However, the trial court ultimately dismissed the case, rather than rule on the motion to suppress. Because the only motion to dismiss had already been resolved in the prior appeal, the trial court erred in dismissing the case.