

CASE DECISION LIST

August 22, 2024

112855	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
---------------	--------------------	---	------------------------------

COLLEEN KERKAY v JEFFREY KERKAY

Affirmed.

Lisa B. Forbes, P.J., Emanuella D. Groves, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Divorce; de facto termination date; statutory presumption for date of last hearing; R.C. 3105.171; equitable division of marital property and assets; 3105.17(F); spousal-support award; 3105.18(C)(1) factors (a)-(n); not an abuse of discretion; award of attorney fees; R.C. 3105.73(A).*

Husband appeals from the trial court's journal entry granting him a divorce from Wife. The trial court did not abuse its discretion in finding Husband could not overcome the statutory presumption that the termination date for their marriage as the date of the last hearing. A review of the record showed that the trial court divided the parties' assets and real property equally and the decision was supported by competent, credible evidence. The trial court's award of spousal support was based on testimony and evidence and was within the trial court's sound discretion. Last the trial court's award of Wife's attorney fees was also within the trial court's discretion.

There is certainly enough information in the record for the trial court to justifiably award \$3,000 a month for spousal support to Wife. The award was well within the trial court's sound discretion.

112886	COMMON PLEAS COURT	A	Criminal C.P.
---------------	--------------------	---	---------------

STATE OF OHIO v ANTONIO L. CLARK

112888	COMMON PLEAS COURT	A	Criminal C.P.
---------------	--------------------	---	---------------

STATE OF OHIO v ANTONIO L. CLARK

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Burglary; R.C. 2911.12(A)(2); theft; R.C. 2913.01(A)(1); improper use of a peremptory challenge; Batson v. Kentucky, 476 U.S. 79 (1986); disparate treatment between different jurors; ability to act fairly; impartiality; manifest weight; dissimilar use of peremptory challenge; fingerprint evidence; ACE-V; inconsistent verdicts.*

The appellant failed to establish that the State used a peremptory challenge to excuse a black juror based on race. The appellant's convictions for burglary were not against the manifest weight of the evidence where fingerprint comparison results placed appellant

CASE DECISION LIST

(Case 112888 continued)

inside the victims' homes and the jury's verdicts were not inconsistent in a manner that indicates that the jury clearly lost its way in convicting appellant.

113009 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SANATHAN JOHNSON v STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., ET AL.

Affirmed in part, vacated in part, and remanded.

Anita Laster Mays, J.; Kathleen Ann Keough, A.J., concurs in judgment only; Michelle J. Sheehan, J., dissents (with separate opinion).

KEY WORDS: *Civ.R. 35(A); independent medical examiner; scope.*

The trial court did not err in granting appellees' motion to compel a medical examination of appellant that failed to establish good cause or the physical condition in controversy required by Civ.R. 35(A). The trial court did not err as a matter of law in granting a Civ.R. 35 motion filed after the discovery deadline because the motion was within the trial court's deadline. The trial court erred when it did not define the scope of the independent medical examination in their order.

113197 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEMETRIUS SIMMONS

Affirmed.

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

KEY WORDS: *Sufficient evidence; manifest weight of the evidence; R.C. 2317.01; due process; social worker's testimony.*

The appellant's convictions were not against the sufficiency or the manifest weight of the evidence. The trial court did not err when it did not hold a hearing to determine the competency of the minor victims because the statute assumes competency unless they appear incapable of receiving just impressions of the facts and transactions respecting which they are examined. The appellant was not denied due process or a fair trial when the social worker determined that the minor child's allegations were substantiated.

CASE DECISION LIST

113296 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CASE HOLLOWAY

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, A.J., Michael John Ryan, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Engaging in a pattern of corrupt activity; grand theft; conspiracy; liquor; corporation status; indictment; venue; allied offenses.*

Appellant's convictions for engaging in a pattern of corrupt activity, conspiracy, grand theft; and theft upheld where the evidence unequivocally demonstrated that appellant actively participated in large-scale liquor thefts from Giant Eagle stores. The failure to include corporation status in an indictment did not render it defective. Venue proper in Cuyahoga County because appellant's conduct either occurred in or constituted a significant nexus to Cuyahoga County. Appellant's conviction for grand theft was an aggregate of all individual theft offenses, thus were allied and should have merged at sentencing.

113322 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ZAKRY HAYNES

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Consecutive sentences; statutory findings; R.C. 2953.08(G)(2); R.C. 2929.14(C)(4); Reagan Tokes.*

The trial court failed to make the requisite statutory findings to satisfy the requirements of R.C. 2929.14(C)(4) to impose consecutive sentences. Case is limitedly remanded to make the required statutory findings to support the consecutive sentences.

113356 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v DESHAWN DYE

Affirmed.

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

KEY WORDS: *Petition for postconviction relief; R.C. 2953.23; jurisdiction; de novo review; untimely petition; unavoidably prevented from discovering evidence; Brady violation; exculpatory evidence suppressed by prosecution; evidence made available to*

CASE DECISION LIST

(Case 113356 continued)

defense counsel; self-serving affidavit; court may not entertain untimely petition.

Appellant failed to demonstrate that the claimed exculpatory evidence was willfully or inadvertently suppressed by the prosecution. His petition for postconviction relief was untimely, and he did not demonstrate a statutory exception that would allow the trial court to entertain his petition. The trial court therefore lacked jurisdiction to entertain the petition and should have dismissed it, but the error nonetheless was harmless.

113407 PARMA MUNI. C Criminal Muni. & City
CITY OF PARMA v STEVE COYNE

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Motion to suppress; Fourth Amendment; investigatory stop; “fruit of the poisonous tree”; reasonable suspicion; reliable tip; totality of the circumstances; manifest weight.

Judgment affirmed. A 9-1-1 caller’s reliable tip that the defendant was belligerent, drunk, and threatening to be physically violent provided a sufficient basis to develop reasonable suspicion justifying the investigatory stop of defendant’s vehicle. The evidence obtained after the stop, including the arresting officer’s observations of the defendant’s intoxication, the defendant’s own admissions that he was drinking and should not be driving, and subsequent field sobriety tests, substantiated the reasonable suspicion arising from the 9-1-1 call, leading to the defendant’s OVI arrest. Because reasonable suspicion justified the investigatory stop, the evidence gathered thereafter is not “fruit of the poisonous tree” requiring suppression. Accordingly, we affirm the trial court denial of the defendant’s motion to suppress.

113526 BEREA MUNI. C Criminal Muni. & City
CITY OF MIDDLEBURG HEIGHTS v PANAGIOTA BROWN

Affirmed.

Mary Eileen Kilbane, J., Kathleen Ann Keough, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Crim.R. 29 motion for acquittal; manifest weight of the evidence; defense of property; jury instructions; Crim.R. 30; plain error.

A defendant-appellant’s claim on appeal that she has proven defense of property cannot be subject to a sufficiency claim and,

CASE DECISION LIST

(Case 113526 continued)

thus, the trial court did not err when it denied defendant-appellant's Crim.R. 29 motion for acquittal. The jury's verdict was not against the manifest weight of the evidence where the defendant-appellant's defense of property claim was not supported by the evidence. The trial court's failure to submit a complete copy of the jury instructions to the jury did not amount to plain error where the court read the complete jury instructions to the jury, the evidence supported defendant-appellant's conviction, and the State met its burden of persuasion at trial.

113528 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRISTIAN RICHARD

Affirmed and remanded.

Kathleen Ann Keough, A.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Plea; defective indictment; waived; consecutive-sentence findings; incorporate; nunc pro tunc; Reagan Tokes Law.*

Appellant's plea and convictions upheld when appellant did not object to any alleged deficiency in the indictment. Trial court's failure to incorporate consecutive-sentence findings in the judgment entry does not render appellant's sentence contrary to law; rather, it can be corrected nunc pro tunc. Appellant's challenge to the Reagan Tokes Law summarily rejected.

113569 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
U.S. BANK NATIONAL ASSOCIATION v WALTER P. BUBNA, ET AL.

Dismissed.

Kathleen Ann Keough, A.J., Emanuella D. Groves, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Foreclosure; objections; magistrate's decision; final appealable order.*

Appeal dismissed for lack of a final appealable order where the trial court's judgment entry adopting the magistrate's decision did not address the specific objections, but merely stated that the "objection" was overruled.

CASE DECISION LIST

113584 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
FIG AS CUSTODIAN FOR FIG OH18, LLC & SECURED PARTY v JOHN J. LYNCH, ET AL.

Affirmed.

Kathleen Ann Keough, A.J., Mary Eileen Kilbane, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Civ.R. 60(B) motion for relief from judgment; foreclosure; objections to magistrate's decision; meritorious defense.*

In foreclosure action, trial court did not abuse its discretion in adopting the magistrate's decision denying the plaintiff's Civ.R. 60(B) motion for relief from judgment and overruling defendant's objections to the magistrate's decision where the defendant failed to demonstrate she had a meritorious defense if the Civ.R. 60(B) motion was granted and that she was entitled to relief under Civ.R. 60(B)(1)-(5).

113612 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v U.T.

113613 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v U.T.

113614 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v U.T.

Reversed and remanded.

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

KEY WORDS: *R.C. 2953.32(A)(5); expungement; sealing the records of conviction.*

The trial court's judgment sealing the records of the applicant's three drug-trafficking convictions is reversed. The applicant's convictions are not eligible to be sealed because the April 2023 version of R.C. 2953.32(A)(5) prevents the expungement or sealing of more than two third-degree felony convictions.

113615 JUVENILE COURT DIVISION E Civil C.P.-Not Juv,Dom Or Prob
IN RE: KY.D., ET AL.

Affirmed.

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

CASE DECISION LIST

(Case 113615 continued)

KEY WORDS: Termination of parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.413; R.C. 2151.353; R.C. 2151.414; clear and convincing evidence; cannot or should not be placed with either parent within a reasonable time; best interests of the children; competent, credible evidence; reasonable efforts to reunite family; R.C. 2151.419; due process.

The juvenile court's findings related to the best interests of the children were supported by competent, credible evidence, and the factors weighed in favor of permanent custody. The court was not required to make a "reasonable efforts" finding in its permanent custody order; however, the record demonstrates that the agency did, in fact, make reasonable efforts to return the children to Mother's home. Finally, Mother did not demonstrate that her due process rights were violated by the juvenile court.