

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 11

December 26, 2024

112963 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
J.S. v A.S.

112997 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
J.J.S. v A.P.S.

113007 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
J.S. v A.S.

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Eileen A. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Spousal support; child support; income; marital property; separate property; attorney fees; equity; personal jurisdiction; attorney disqualification.*

Trial court properly found it had personal jurisdiction over husband where the docket reflected out-of-state service, and there was insufficient evidence to rebut the presumption of proper service.

Trial court properly denied husband's motion to disqualify wife's counsel where counsel represented wife's father and the expert custody evaluator where husband lacked standing to challenge the representation and husband failed to establish that the representation posed a conflict between the clients.

Trial court did not abuse its discretion when it failed to award a distributive award to husband for wife's alleged financial misconduct. Husband failed to establish that wife profited from the dissolution of her separate property or intentionally acted to dissipate, destroy, conceal, or fraudulently dispose of husband's assets. Trial court likewise did not err in failing to make a negative inference based on withheld evidence. Husband argued wife's father was funneling money to her from unknown accounts, but it was never established that wife held an ownership interest in those accounts, such that she was withholding account information.

Trial court did not abuse its discretion in granting wife's request for shared parenting plan over husband's request for sole custody where parties had engaged in a shared parenting plan during the majority of the almost four years of the divorce. Husband's objection to the appointment of a parenting coordinator based on his belief that wife will not cooperate or that he will not have a meaningful method of reviewing the coordinator's decisions was not ripe for review.

Trial court erred in granting husband a 50 percent interest in the marital home, where the record established that he had acquired a 25 percent interest prior to the marriage.

Trial court abused its discretion when it found that an unproven retirement account allegedly owned by wife should be split 50-50.

(Case 113007 continued)

There was no evidence that the account existed, further, the evidence established that wife worked at her former employer prior to the marriage, accordingly the trial court needed to determine if any portion of that account contained separate property.

Trial court abused its discretion when it found that wife's income equaled the amount of money her father gave her in the course of a year when calculating spousal and child support. The trial court failed to consider the factors in R.C. 3105.18(C), there was no evidence that wife had the ability to earn the kind of money that father had given to her, and there was no evidence that father could sustain that level of gifting. Additionally, the court's order effectively required father to pay spousal support where it was undisputed that wife had been unemployed since 2005 and that her sole source of funds was her father.

Trial court's award of attorney's fees, bond, and GAL fees must be reversed to allow the court to reevaluate the equity of its order given the findings of this decision.

Wife's request for personal property in the marital home and objections to the decision allowing husband to claim the children on federal taxes are both overruled as insufficiently briefed.

Trial court did not err when it granted motion to quash wife's subpoena for a non-testifying expert's reports where she failed to establish exceptional circumstances and that it was impracticable for her to obtain facts or opinions on the same subject by other means.

112984 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHARLES BERNARD, ET AL. v THOMAS CHRISTOPHERSON, ET AL.

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Civ.R. 15(B); motion to amend pleadings; slander of title; publication; recording.*

Judgment affirmed in part, reversed in part, and remanded. Although many claims, arguments, and issues were raised throughout the course of the litigation, this appeal centers around the trial court's disposition of two: the amendment of the pleadings to include adverse possession and/or prescriptive easement of the defendants' property and the plaintiffs' slander-of-title claim. The trial court abused its discretion when it amended the pleadings to include adverse possession and/or prescriptive easements of the defendants' property as potential theories of recovery because the defendants did not expressly or impliedly consent to the amendment. The record reveals that (1) plaintiffs did not assert factual allegations in the complaint consistent with adverse possession or prescriptive easement of the defendants' property and (2) the defendants did not have a fair opportunity to address the

(Case 112984 continued)

theory of adverse possession as it relates to their property at trial. Finally, the trial court did not err in finding that the plaintiffs failed to satisfy the first element of their slander-of-title claim because the defendants did not record a slanderous statement, as required to establish “publication.”

113426 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JEHANNA FRANCIS v BOARD OF TRUSTEES SIGNATURE SOLON HOMEOWNERS, ET AL.

Affirmed.

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

KEY WORDS: Motion for summary judgment; homeowners association; declaratory judgment; breach of contract; substantial performance; not material breaches; no breach of fiduciary duty; no fiduciary duty; fence restriction enforceable; breach-of-mediation/arbitration clause; breaching party; breaching party cannot succeed on breach-of-contract claim; motion to strike affidavits; Ohio Planned-Community Law; R.C. 5312.13.

Trial court properly granted summary judgment of appellant/cross appellee’s claims for breach of contract, declaratory judgment, and breach of fiduciary duty in favor of the appellee homeowners association board and individual members. Trial court also properly granted appellant/cross-appellee summary judgment as to the appellees/cross-appellants’ counterclaim for breach of contract against appellant/cross-appellee. The alleged violation of Ohio Planned-Community Law is moot when then alleged documents were provided to appellant/cross-appellee. The court properly did not abuse its discretion when it denied appellant/cross-appellee’s motion to strike two affidavits.

The trial court’s decision to deny appellees/cross-appellants’ first cross-assignment of error for breach of contract was affirmed, but for a different reason than the trial court’s, holding that appellees/cross-appellants cannot enforce a mandatory mediation/arbitration clause when they failed to perform under that contract provision themselves.

Regarding appellees/cross-appellants’ second cross-assignment of error, we affirm the trial court’s decision to deny appellees/cross-appellants’ motion to strike appellant/cross-appellee’s expert report. Because the court granted summary judgment to appellees/cross-appellants, the admissibility of appellant/cross-appellee’s expert report is immaterial and, thereby, moot.

CASE DECISION LIST

113697 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v ROBIN SOPJACK

Dismissed in part, reversed in part, and remanded.

Anita Laster Mays, J., Emanuella D. Groves, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Res Judicata, community-control sanctions, locus of the offense conduct.*

Appellant's order to produce financial records was not an amended condition of community-control sanctions. This order was not appealed after the initial sentencing and is therefore deemed voidable and not void. The doctrine of res judicata is therefore applicable. The trial court erred when it amended appellant's community-control sanctions to include inspection of the interior of her home, which was not the locus of the offense conduct.

113703 SHAKER HTS. MUNI. C Criminal Muni. & City
CITY OF PEPPER PIKE v R.E.S.

Reversed and remanded.

Michael John Ryan, J., and Mary J. Boyle, J., concur; Michelle J. Sheehan, P.J., concurs in judgment only (with separate opinion).

KEY WORDS: *Protection order; abuse of discretion; mens rea; sufficiency of the evidence; cumulative error; Evid.R. 901; relevant evidence; mistake of fact; recklessness; plain error.*

Judgment reversed and case remanded for a new trial. In a case involving the violation of a protection order, the trial court erred when it did not allow the pro se appellant to introduce his divorce decree into evidence. The divorce decree was relevant to show that the appellant was disregarding the protection order because he believed the divorce decree terminated the protection order. Even though his belief was erroneous, the jury should have been able to decide whether appellant's honest belief was that the divorce decree terminated the protection order and, therefore, determine whether appellant was reckless for failing to realize the protection order survived the divorce decree.

The trial court erred when it allowed the city to discuss appellant's prior conviction and other facts not in evidence. Although appellant's conviction occurred before the trial in this case, the offense for which he was convicted occurred after the offense in this case. The city cannot use a future bad act to show a person's state of mind for a prior offense. The court erred in allowing the city to argue that appellant had committed assault, when no evidence was put forth that appellant had ever been charged or convicted of the crime of assault. The trial also erred in allowing the city to argue that appellant had sent inappropriate text messages to the victim's

CASE DECISION LIST

(Case 113703 continued)

coworker because the statement argued facts not in evidence and was highly prejudicial.

Cumulative errors deprived appellant of a fair trial.

113729 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
N.S. v M.S.

Reversed.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and William A. Klatt, J.,* concur.

(*Sitting by assignment: William A. Klatt, retired, of the Tenth District Court of Appeals.)

KEY WORDS: Civil stalking protection order; ex parte order; sealing of an ex parte protection order; R.C. 2903.214; unsealing of the record.

The trial court was without statutory authority or discretion to unseal the record of an ex parte protection order after the record had been properly sealed as required by R.C. 2903.214(G)(2). Consequently, the trial court's order unsealing the record is reversed.

113739 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GERALD GROOMS, JR.

Affirmed.

Emanuella D. Groves, P.J., Michael John Ryan, J., and Anita Laster Mays, J., concur.

KEY WORDS: Restitution; manifest weight; sentencing; R.C. 2929.11; R.C. 2929.12.

Judgment affirmed. A review of the trial court's journal clearly indicates that either restitution was to be paid, or the trial would proceed. Since trial proceeded, the trial court's journal entry is moot and the restitution order is no longer in effect. Moreover, the trial court's sentencing entry is silent as to restitution. Consequently, there is no existing restitution order and the defendant's argument that that the trial court plainly erred in ordering restitution prior to his trial or conviction is meritless. Nor is this the exceptional case contemplated by the Ohio Supreme Court where the evidence weighs heavily against conviction. The jury did not clearly lose its way in resolving conflicts in the evidence and create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. Finally, we cannot say that the defendant's sentence is contrary to law; based on our review of the record before us, the trial court considered the purposes of sentencing and sentencing factors prescribed by R.C. 2929.11 and 2929.12.

CASE DECISION LIST

113743 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CARMEN BATTAGLIA v ANN MARIE DONEGAN, ET AL.

Affirmed.

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

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: *Summary judgment; defamation; false-light invasion of privacy; statute of limitations; saving statute; supplemental jurisdiction statute; breach of contract.*

Summary judgment on plaintiff's defamation and false-light claims affirmed where plaintiff refile his complaint following a dismissal without prejudice outside the time periods provided by the applicable statute of limitations and Ohio saving statute.

Summary judgment on plaintiff's breach-of-contract claim affirmed where there was no evidence that the contract was breached.

113744 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DANIEL GILLES v ANN MARIE DONEGAN, ET AL.

Affirmed.

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

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: *Motion for summary judgment; statute of limitations; defamation; false light; breach of contract; R.C. 2305.19; saving statute; 28 U.S.C. 1367(d); supplemental jurisdiction statute; plain language of contract; unambiguous language.*

Because plaintiff-appellant raised defamation claims against defendant-appellee the City and false light claims against all three defendants-appellees after the expiration of the applicable one-year statute of limitations, the trial court did not err when it granted summary judgment on those grounds.

Further, the trial court did not err when it found the supplemental jurisdiction statute - 28 U.S.C. 1367(d) - neither tolled the applicable statute of limitations nor extended the statute of limitations with a 30-day grace period.

Defendants-appellees acted in accordance with the nondisparagement provision contained in plaintiff-appellant's settlement agreement and, thus, the trial court did not err when it granted summary judgment on the breach-of-contract claim.

CASE DECISION LIST

113754 PARMA MUNI. G Civil Muni. & City
PICNIC PLACE DEVELOPMENT LLC v JAZMANE M. PRESTON AND OCCUPANTS

Dismissed.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Forcible entry and detainer; mootness doctrine.*

Dismissed. *The ex-tenant's appeal from a forcible entry and detainer action resulting in the landlord's repossession and control of the unit, which was based on the lack of a stay of execution, renders the appeal challenging the merits of the action to be moot.*

113766 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVERICK LASH

Reversed and remanded.

Anita Laster Mays, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Motion for application for DNA testing; outcome determinative; abuse of discretion; contrary to law.*

Trial court's decision to deny the appellant's motion for application for DNA testing is contrary to law and, thus, an abuse of discretion because it did not engage in an analysis of defense theories or provide the reasons on which it relied in reaching its conclusion that the DNA test would not be outcome determinative.

113788 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JEROME PIERCE WILLIAMS

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Hearsay; Evid.R. 801(C); Evid.R. 802; exclusions to the hearsay rule; Evid.R. 803; extrinsic evidence; impeachment; Evid.R 103(A); ineffective assistance of counsel; other-acts evidence; Evid.R. 404(B); right to be present during trial; manifest weight of the evidence.*

Defendant's convictions were affirmed for the following reasons: (1) the trial court did not err when it excluded extrinsic evidence of the victim's purported statement because the statement was hearsay and no exception applied; (2) defense counsel was not ineffective for failing to impeach the victim with her prior recorded statement,

CASE DECISION LIST

(Case 113788 continued)

and even if defense counsel was ineffective, defense counsel's deficient performance did not prejudice the defendant; (3) the trial court did not err when it permitted the victim to testify to prior abuse by the defendant because it was relevant to establish the victim's fear of the defendant; (4) the trial court did not violate the defendant's right to be present on the morning of the second day of trial due to the defendant's voluntary relinquishment of his right to be present, and (5) the defendant's convictions were not against the manifest weight of the evidence.

113798 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MYRON GRACE v EXETER FINANCE

Affirmed.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Motion to dismiss; Civ.R. 12(B)(6); failure to state a claim; factual allegations; insufficient; legal conclusions; unsupported.*

Affirmed the decision of the trial court to grant the defendant's motion to dismiss the complaint under Civ.R. 12(B)(6). The complaint set forth insufficient factual allegations, included unsupported legal conclusions, and otherwise failed to state any viable claim upon which relief could be granted.

113930 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: M.B., ET AL.

113992 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: M.B., ET AL.

Affirmed.

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

KEY WORDS: *Venue; permanent custody; R.C. 2151.353(A)(4); R.C. 2151.414(E); R.C. 2151.414(D)(1); sufficiency of the evidence; manifest weight of the evidence; clear and convincing evidence.*

Judgment affirmed. The juvenile court did not abuse its discretion in declining to transfer the case to a different county. Moreover, the Cuyahoga County Division of Children and Family Services ("CCDCFS") presented clear and convincing evidence to establish certain R.C. 2151.414(E) and 2151.414(D)(1) factors, as required by R.C. 2151.353(A)(4). Accordingly, the juvenile court's decision is supported by sufficient evidence and is not against the manifest weight of the evidence. Therefore, the juvenile court did not err when it granted permanent custody to CCDCFS.

CASE DECISION LIST

113970 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JAMES M. GLAVIC v WELTMAN, WEINBERG & REIS, CO., LPA, ET AL.

Vacated; dismissed.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Dismissal with prejudice; dismissal without prejudice; Civ.R. 60(A); nunc pro tunc; jurisdiction; final appealable order; void.*

Judgment vacated and dismissed. The trial court erred and was without jurisdiction when it granted the Civ.R. 60(A) motion and issued a nunc pro tunc order modifying its dismissal “without prejudice” to a dismissal “with prejudice” after the appellant had already filed a notice of appeal challenging the “without prejudice” dismissal issued on May 3, 2024. The trial court’s actions did not qualify as in aid of the appeal, but rather modified the very substance of the judgment under appeal and was thus inconsistent with the jurisdiction of the appellate court and is therefore void. As a result, those journal entries are void; we have no authority to consider them. And because a trial court’s dismissal of a matter without prejudice is not a final, appealable order, this court is without jurisdiction to review the May 3, 2024 journal entry.

114015 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ANGEL CARRERO v MIGDALIA PABON

Affirmed.

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

KEY WORDS: *Appellate review; limited to record; App.R. 9; App.R. 12; Civ.R. 41(B)(1); dismissal with prejudice; failure to appear at trial; failing to comply with court order; heightened abuse-of-discretion standard; party must have had notice of possibility of dismissal.*

Appellant and his counsel did not appear for trial nor did they comply with the court’s prior order to file a trial brief, witness lists, exhibit lists, motions in limine, and stipulations seven days prior to trial. The court properly put appellant on notice that failure to comply with its order or appear for trial would result in dismissal. Consequently, the trial court did not abuse its discretion in dismissing the case with prejudice, even under a heightened abuse-of-discretion standard.

CASE DECISION LIST

114175 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DARIUS MOREE v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, ET AL.

Affirmed in part, reversed in part, and remanded.

Eileen A. Gallagher, P.J., and William A. Klatt, J.,* concur; Sean C. Gallagher, J., concurs (with separate opinion).

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: *Political subdivision immunity; negligent operation of a motor vehicle; negligent training/supervision; summary judgment; final appealable orders.*

The trial court's denial of the political subdivision's (RTA) motion for summary judgment is affirmed in part and reversed in part. Denying summary judgment as to the negligent operation of a motor vehicle claim is proper because there is a question of fact for the jury regarding whether the RTA driver was negligent, and thus, whether political subdivision immunity applies. The denial of summary judgment as to the negligent supervision and/or training claim was error, because under R.C. Ch. 2744, political subdivisions are immune from liability for negligent supervision and/or training of an employee operating a motor vehicle. The remaining arguments concerning mootness and dismissal of claims are not based on final appealable orders and we are unable to review them.

114213 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v THOMAS JONES

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Postconviction relief; R.C. 2953.23; untimely; no exception applies; abuse of discretion; R.C. 2967.132; parole board.*

Judgment affirmed. Defendant's petition is untimely, and no exception under R.C. 2953.23(A)(1) applies. The new right asserted by defendant is that youth must be considered in sentencing when juvenile offenders are sentenced to life without the possibility of parole, which was recognized by the United States Supreme Court. The defendant, however, was not sentenced to life without the possibility of parole, but instead life with parole eligibility in 20 years. Therefore, the rights recognized by the United States Supreme Court do not apply to the defendant. Furthermore, the Ohio Supreme Court has made it clear that R.C. 2953.23 only applies to rights recognized by the United States Supreme Court and not rights only recognized by the Ohio Supreme Court. As a result, we do not find the trial court abused its discretion by denying defendant's petition for postconviction relief. Additionally, defendant acknowledges that he filed a writ of mandamus against

CASE DECISION LIST

(Case 114213 continued)

the parole board for the same relief he requests in this appeal. Defendant was successful in this writ, and the court ordered the parole board to immediately afford him a meaningful opportunity to demonstrate maturity and rehabilitation to obtain release as set forth in R.C. 2967.132.