

CASE DECISION LIST

February 15, 2024

112389 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v STEVEN FLORES

Affirmed.

Mary J. Boyle, J., Kathleen Ann Keough, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Gross sexual imposition, sufficiency; manifest weight of the evidence; Evid.R 803(4) admissibility of social worker's testimony and video recording of child victim's interview, exceptions to hearsay, medical diagnosis and treatment; venue; R.C. 2901.12, continuing course of conduct.*

112394 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RODNEY GOLSTON

Affirmed.

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

KEY WORDS: *R.C. 2907.02(D); rape shield; hearing; day of trial; plain error; motion in limine; authentication; social media posts.*

Appellant argues that the trial court erred in holding a hearing pursuant to R.C. 2907.02(D) on the day of trial. A review of the record demonstrates that appellant did not object to the court holding the hearing the day of trial rather than three days prior pursuant to the statute. Accordingly, appellant waived all but plain error. We find that the appellant did not demonstrate that the court plainly erred because its holding in disallowing the evidence of the victim's prior sexual encounters was consistent with Eighth District precedent, and appellant did not demonstrate that holding the hearing earlier would have affected the outcome of trial.

Further, we find that the trial court did not err in granting the state's motion in limine regarding apparent printouts of social media posts. The exhibits were not authenticated through testimony of the alleged sender and appellant did not make a proffer to try to authenticate them by other means.

Judgment affirmed.

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112600 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate

M. A. B. v B. R. L.

Affirmed in part; reversed in part; and remanded.

Eileen T. Gallagher, J., and Mary Eileen Kilbane, J., concur; Michelle J. Sheehan, P.J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Civil contempt; show cause; attorney fees; fines; purge; agreed judgment entry; contract interpretation.*

Trial court properly found Mother in contempt of court for unreasonably withholding parenting time from Father after Father completed a ten-panel drug test required for unsupervised visitation even though one of the results of the test was delayed.

Trial court properly required Mother to reimburse Father for the cost of an unnecessary ten-panel toenail test since the test was unnecessary and Mother required it before she would release the child to the Father for visitation.

Trial court properly denied Father's request for attorney fees where Father failed to demonstrate the reasonableness of the fees with an itemized statement and evidence of the parties' respective incomes.

112629 COMMON PLEAS COURT A Criminal C.P.

STATE OF OHIO v AARON T. PETTIS

Affirmed.

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

KEY WORDS: *Sierah's Law; violent offender database; VOD; R.C. 2903.41; constitutionality; Retroactivity Clause; Ohio Constitution; Article II, Section 28; separation of powers; motion to vacate; presumption of enrollment; timeliness; notice; R.C. 2903.42(A)(2)(b).*

The application of Sierah's Law to offenders who committed their offense before the law's effective date does not violate Ohio's Retroactivity Clause or the separation-of-powers doctrine. The offender filed a motion to vacate the requirement that he remain enrolled in the violent offender database ("VOD") established by Sierah's Law, but he did so months after he was released from prison. Therefore, the offender failed to comply with R.C. 2903.42(A)(2)(b) (requiring such a motion be made prior to release) and his motion was properly denied.

The Ohio Department of Rehabilitation and Correction provided adequate notice to the offender prior to his release about the VOD enrollment obligations, his right to file a motion seeking to rebut

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the presumption that he be enrolled and the procedure for filing that motion. The notice could have more clearly stated that the motion must be made prior to release, but the notice was reasonably calculated to inform the offender of the deadline for making a motion and informed him that he could review the relevant legislation in the library upon request. The record reflects that the offender largely ignored the ODRC's notice while he was incarcerated. When he did review it and realized that it applied to him, he still only briefly scanned the relevant section explaining the procedure for filing a motion. He never requested a copy of the legislation from the library. Under these circumstances, his failure to file a timely motion could not be attributed to insufficient notice or excusable neglect. Judgment affirmed.

112646	PARMA MUNI.	C	Criminal Muni. & City
CITY OF PARMA v WILLIE S. JACKSON			

Reversed and vacated.

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

KEY WORDS: *Obstructing official business; Parma Cod.Ord. 606.14(a); overt act; refusal to give police name and date of birth.*

Evidence was insufficient to sustain a conviction for obstructing official business where the defendant merely refused to give police his name and date of birth but did not engage in any overt act that hindered or impeded the police investigation.

112650	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v KEVIN FERGUSON			

Affirmed.

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

KEY WORDS: *Gross sexual imposition; manifest weight of the evidence; plain error; grand jury; burden of proof; presumption of innocence.*

The trial court's statements relating to grand jury proceedings did not impact the defendant's presumption of innocence or otherwise amount to plain error where the trial court subsequently and repeatedly instructed the jury as to the applicable legal standards and burden of proof at trial. The conviction was not against the manifest weight of the evidence.

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112726 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHANDHRY NAZIR

Affirmed.

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

KEY WORDS: *Felony sentencing; appellate review; R.C. 2953.08(G)(2); purposes and principles of sentencing; R.C. 2929.11; seriousness and recidivism factors; R.C. 2929.12; clear and convincing evidence; mitigating factors; particular language; specific findings.*

A trial court, when crafting a felony sentence, may consider evidence that the defendant failed to appear for a presentence-investigation interview, failed to cooperate with the probation office, and failed to turn himself in when a capias was issued before sentencing. The defendant knew he was required for sentencing but refused to turn himself in; he was arrested around nine months later and brought back before the court for sentencing. Although the trial court did not specifically comment on the underlying facts of the case - other than this failure to appear - before announcing its sentence, there was insufficient evidence to conclude that the court failed to consider the purposes and principles of felony sentencing or the R.C. 2929.12 factors before imposing sentence. The court stated that it had considered all required factors of the law. The court ordered and reviewed a presentence-investigation report. It considered the materials submitted by the defendant in mitigation. It heard argument from the prosecutor and defense counsel on the factors. The defendant spoke to the court on his own behalf before sentence. His sentence fell within the permissible statutory range. Judgment affirmed.

112732 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY BECK

Affirmed.

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

KEY WORDS: *R.C. 2921.331; mandatory advisement; consecutive sentence; Crim.R. 11; not a complete failure to comply; prejudice.*

Where the appellant did not show any prejudice resulted from the trial court's incomplete advisements on consecutive sentencing pursuant to R.C. 2921.331, the trial court complied with Crim.R. 11(C)(2)(a).

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112736 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
THE CALABRESE LAW FIRM v JOHN R. CHRISTIE

Affirmed in part; reversed in part; and remanded.

Kathleen Ann Keough, A.J., Michelle J. Sheehan, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Res judicata; individual capacity; limited liability company; settlement and release; manifest weight of the evidence; hearsay; App.R. 16(D); damages; setoff to jury award; breach of contract; attorney fees; contingency fee agreement; lodestar; prejudgment interest.*

Jury verdict finding that defendant breached a sublease with plaintiff affirmed and trial court's award of attorney fees in favor of plaintiff affirmed. Plaintiff's earlier settlement with other signatories on the sublease was not res judicata to plaintiff's claims against defendant, who signed the sublease in his individual capacity; plaintiff could bring its breach-of-contract claim as a limited liability company; plaintiff's settlement and release of defendant in an unrelated lawsuit did not bar plaintiff's claims against defendant in this case; the jury's verdict finding that defendant breached the sublease was not against the manifest weight of the evidence; defendant did not support his argument that two witnesses gave hearsay testimony by reference to the record as required by App.R. 16(D); plaintiff presented sufficient evidence of damages to support the jury's damages award; plaintiff was entitled to attorney fees as the prevailing party because the sublease expressly provided that plaintiff could recover its attorney fees upon defendant's breach of the sublease; trial court did not abuse its discretion in not awarding the total amount of attorney fees requested by plaintiff because the court could properly consider that counsel had a contingency fee agreement with plaintiff; trial court erred in denying plaintiff's motion for prejudgment interest because a party granted judgment on a contract claim is entitled to prejudgment interest as a matter of law.

112774 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTONIO M. SANCHEZ

Affirmed.

Sean C. Gallagher, J., Kathleen Ann Keough, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Rape; gross sexual imposition; R.C. 2907.02(A)(1)(b); R.C. 2907.05(A)(4); touching; digital penetration; Evid.R. 803(4); hearsay; medical diagnosis and treatment; plain error; prosecutorial misconduct; closing argument; demeanor; credibility; Crim.R. 29; acquittal; sufficiency; sexual contact; R.C. 2907.01(B); sexual conduct; gratification; time frame; R.C. 2907.01(A); manifest weight; evidence.*

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(Case 112774 continued)

Affirmed appellant's convictions for rape and gross sexual imposition. The trial court did not abuse its discretion in admitting the child's statements made for purposes of medical diagnosis and treatment under Evid.R. 803(4), and no plain error was shown. No prosecutorial misconduct occurred with regard to remarks made during closing argument as to the victim's demeanor in the courtroom. The trial court did not err in denying appellant's Crim.R. 29 motion for acquittal when sufficient evidence was presented to prove the essential elements of the crimes beyond a reasonable doubt. Appellant's convictions were not against the manifest weight of the evidence.

112787 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRIAN CRAWFORD

Reversed and remanded.

Kathleen Ann Keough, A.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: Restitution; R.C. 2929.18(A); Marsy's Law; economic loss; related to convictions; jail-time credit; R.C. 2967.191(A).

Trial court erred in ordering defendant to pay restitution because the amount was not based on the economic loss suffered as a direct and proximate result of the commission of the offense. Trial court's calculation of jail-time credit is reversed and remanded for a recalculation because the defendant was not incarcerated solely on the current case.

112843 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARQUISE D. JACKSON

Reversed and remanded.

Sean C. Gallagher, J., Kathleen Ann Keough, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Consecutive sentence; R.C. 2929.14(C)(4); findings.

Reversed. Based on the arguments and concessions presented by the parties, the trial court erred in concluding that the law required the sentences imposed for violations of community control sanctions to be served consecutive to the sentences imposed on the new offenses committed while the offender was serving the community control sanctions.

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112883 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

R.W.B. v T.V.

Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Civil stalking protection order; abuse of discretion; preponderance of evidence; mental distress.*

The trial court did not abuse its discretion in finding that petitioner has demonstrated by a preponderance of evidence the element of mental distress. Mental stress need not be incapacitating or debilitating, and actual treatment by a professional is not required to prove mental distress. The trial court here was permitted to rely on its knowledge and experience in determining whether mental distress has been caused.

112938 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

DARREN GUERRINI, ET AL. v CHANELL ROOFING & HOME IMPROVEMENT, LLC

112939 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

DARREN GUERRINI, ET AL. v CHANELL ROOFING & HOME IMPROVEMENT, LLC

Affirmed.

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

KEY WORDS: *Arbitration; waiver; declaratory judgment; omitted counterclaim; compulsory counterclaim.*

No authority supports appellant's claim that appellee, as the principal of a company that is not a party in the instant case, is bound by the latter's conduct in a prior dismissed case and should be deemed as having acted inconsistently with his right to arbitration, where appellee, not the company, is the party to the contract containing the arbitration provision. The trial court properly granted appellee's motion for judgment on the pleadings in this declaratory judgment action.

112986 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

STATE OF OHIO v MICHAEL S. MARBUERY-DAVIS

Affirmed.

Kathleen Ann Keough, A.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

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(Case 112986 continued)

KEY WORDS: Motion to vacate void sentence; not guilty plea; arraignment; petition for postconviction relief; R.C. 2953.23(A).

Defendant's sentence was not void for lack of personal jurisdiction because the defendant voluntarily appeared at his arraignment and pleaded not guilty, thereby waiving any challenge to the trial court's exercise of personal jurisdiction over him; trial court properly considered defendant's motion to vacate void sentence as a petition for postconviction relief and, because the petition was untimely filed and did not meet the requirements of R.C. 2953.23(A), properly dismissed it.

113044 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.A.B.

Affirmed.

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

KEY WORDS: *Due process; evidentiary hearing; transcript.*

Juvenile court's judgment rendered after an evidentiary hearing affirmed because the appellant did not provide the transcript of the hearing and thus, the appellate court presumed regularity in the juvenile court's proceedings and appellant failed to demonstrate any violation of due process.

113213 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: B.B.C.

Affirmed.

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

KEY WORDS: *Manifest weight; permanent custody; best interests of child; CCDCFS; R.C. 2151.414; clear and convincing evidence; reunification; R.C. 2151.419; case plan; incarceration.*

Judgment affirmed. There is clear and convincing evidence in the record to support the juvenile court's determination that permanent custody to CCDCFS is in B.B.C.'s best interest. Accordingly, the court's decision to grant permanent custody is not against the manifest weight of the evidence. Furthermore, the juvenile court complied with the requirements of R.C. 2151.419 in its journal entries granting temporary custody and made reasonable-efforts findings in its final judgment entry granting permanent custody of B.B.C. to CCDCFS. Lastly, the R.C. 2151.419 requirement to make reasonable efforts to prevent the removal of the child from the child's home generally does not require CCDCFS to make

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unreasonable efforts to attempt reunification with an incarcerated parent.