

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 22, 2024

112516 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
GERALDINE KITTIS, ADMINISTRATOR OF EST. OF DENNIS KITTIS v
THE CLEVELAND CLINIC FOUNDATION

Reversed and remanded.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Motion in limine; Evid.R. 702; medical malpractice; medical expert testimony; proximate cause; motion for summary judgment; and Civ.R. 56.*

Where the plaintiff-appellant's medical expert's opinion was rendered with the requisite medical probability and sufficiently described proximate cause, the trial court abused its discretion when it granted defendants-appellees' motion in limine to exclude the medical expert's opinion testimony on causation. Where the plaintiff-appellant's medical expert testimony created genuine issues of material fact as to whether the defendants-appellees' acts were the proximate cause of the deceased's injuries and death, the trial court erred when it granted defendants-appellees' motion for summary judgment.

112589 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
LAKE PARK ESTATES POND ASSOCIATION, ET AL. v
THE CITY OF BRECKSVILLE, OHIO, ET AL.

Affirmed and remanded.

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

KEY WORDS: *Summary judgment; political subdivision; city; immunity; stormwater; sewer system; pond; private property; property owners; aesthetic; maintain; repair; taking; trespass; natural watercourse; reasonable use.*

Affirmed the judgment of the trial court that granted the motion for summary judgment of the city of Brecksville upon determining the city is entitled to political-subdivision immunity and that denied the appellants' motion for summary judgment. Appellants failed to produce evidence upon which to establish the pond at issue and its outlet structure, which are located on private property, are part of the city's public stormwater sewer system. The R.C. 2744.02(B)(2) exception to the general grant of immunity to a political subdivision did not apply to the case. The record also did not support appellants' claims that a taking or trespass has occurred.

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112618 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE J.Q.-P.

Affirmed.

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

KEY WORDS: *Civ.R. 15(B); motion to amend pleadings to conform to the evidence; abuse of discretion; implied consent; motion to modify custody; separate argument; App.R. 12(A)(2); App.R. 16(A)(7).*

Juvenile court did not abuse its discretion in denying father's motion to amend his pleadings to conform to the evidence to allow him to seek a change in custody where (1) father had not filed a motion to modify the judgment entry allocating parental rights and responsibilities, (2) mother, who was proceeding pro se, prepared for and argued her motion to terminate or modify father's parenting time, not a motion to change custody, and (3) the juvenile court found that to consider a change in custody without a motion would be a denial of due process and fundamentally unfair. Appellate court could disregard assignment of error related to juvenile court's dismissal of father's motion to modify custody where father did not separately argue the assignment of error in his appellate brief.

112685 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TAYLON L. CARTWRIGHT

Affirmed.

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

KEY WORDS: *Substantial impairment; rape; R.C. 2907.02; lay evidence; Evid.R. 701; abuse of discretion; sufficiency of the evidence.*

Affirmed. The trial court did not err by sustaining an objection to the defendant's question regarding a specific gradation of a victim's level of intoxication, and there was sufficient evidence that the defendant raped the victim, who was not his spouse, while she was substantially impaired due to voluntary intoxication.

112765 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TERRY LOPARO v UNIVERSITY HOSPITALS HEALTH SYSTEM, INC., ET AL.

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Affirmed in part; reversed in part; and remanded.

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

KEY WORDS: *Production of documents; COVID 19; negligence; medical records; time data; physician-patient privilege; waiver; exception; relevance; discovery; interrogatories; medical malpractice; civil action; motion to compel; abuse of discretion; de novo review; protected health information; R.C. 2317.02; causally or historically related; exceptions; confidentiality; treatment; HIPAA; nonparty patient; diagnosis.*

Appellants claimed immunity in a negligence and wrongful death lawsuit under H.B. 606. Appellants claimed alleged failure to treat decedent in a timely manner was due to the Appellants' prioritization of COVID patients. Appellee requested nonparty patient data to challenge Appellants' defense. Appellants objected to the discovery request, arguing the nonparty patient data was protected from disclosure under HIPAA and privileged under R.C. 2317.02. The trial court conducted an in camera review of disputed discovery responses. The trial court properly granted Appellee's motion to compel the responses for the health data that was not traceable to individual patients, however the trial court erred in ordering the disclosure of patient data that consisted of communications between the provider and patient for the purpose of diagnosis or treatment.

112861	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SURFIN PERCY			

Affirmed.

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

KEY WORDS: *Resentencing hearing; limited remand; R.C. 2929.14(C)(4); statutory findings; court not required to provide reasons or support for findings.*

The trial court did not err in imposing consecutive sentences at appellant's resentencing hearing. The court made the required statutory findings for the imposition of consecutive sentences, and it was not required to provide any reasons or support thereof.

112881	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v TAMIR BUTTS			

Affirmed.

Michael John Ryan, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

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(Case 112881 continued)

KEY WORDS: Petition for postconviction relief; abuse of discretion; convictions for sexually oriented offenses; ineffective assistance of counsel; decision to not present expert testimony; trial strategy.

Judgment affirmed. The trial court did not abuse its discretion in denying the defendant's petition for postconviction relief based on ineffective assistance of counsel. Counsel's decision to not present the defense's expert witness, whose report contained potentially damaging opinions for the defense and, in some respects, corroborated the state's case, was trial strategy.

112895 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAYSON MURG

Affirmed.

Mary Eileen Kilbane, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

KEY WORDS: Gross sexual imposition; pandering sexually oriented matter involving a minor; illegal use of a minor in nudity-oriented material or performance; possessing criminal tools; Crim.R. 32; motion to withdraw guilty plea made during sentencing hearing; highly competent counsel; abuse of discretion.

The trial court did not abuse its discretion in denying a motion to withdraw a guilty plea made during sentencing hearing; nothing in the record indicated that the defendant was not represented by highly competent counsel and, the court was not required to inquire as to counsel's experience.

113017 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WELLS FARGO BANK, NA v RICHARD A. GREENE, ET AL.

113053 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
PLAZA REVOLVING TRUST v DWAYNE GIDDEN, JR., ET AL.

Affirmed.

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

KEY WORDS: Foreclosure; order of confirmation of sale; final, appealable order; Civ.R. 60(B); motion for relief from judgment; motion for reimbursement of advances; failure to appeal.

Following JPMorgan Chase Bank v. Loseke, 8th Dist. Cuyahoga No. 111983, 2023-Ohio-1893, orders of confirmation of sale were final, appealable orders and appellants could not use a Civ.R. 60(B) motion as a substitute for a timely appeal. Accordingly, the trial court did not err in denying appellants' Civ.R. 60(B) motions for

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relief from orders of confirmation of sale.