

CASE DECISION LIST

July 3, 2024

112858 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RSS UBSCM2018C9-OH IMG, LLC v 1360 EAST NINTH CLE, LLC, ET AL.

Affirmed.

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

KEY WORDS: *Foreclosure; summary judgment; admission; default; Evid.R. 803(6); business records exception.*

Judgment affirmed. Plaintiff established all the necessary elements to entitle it to a foreclosure. No genuine issues of material fact remain, plaintiff is entitled to judgment as a matter of law, and when construing the evidence most strongly in defendant's favor, summary judgment is appropriate.

112894 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROBERT MILLER

Reversed and remanded.

Lisa B. Forbes, J., Kathleen Ann Keough, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Consecutive sentences.*

The court failed to make the appropriate statutory finding under R.C. 2929.14(C)(4) that consecutive sentences are not disproportionate to the danger the offender poses to the public. Case remanded to the trial court for the limited purpose of conducting a resentencing hearing.

112993 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SHEILA A. BLAGG v S.T.O.F.F.E. FEDERAL CREDIT UNION, ET AL.

Affirmed.

Eileen A. Gallagher, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; employer; R.C. 4112.01(A)(2); racial harassment; hostile work environment; R.C. 4112.01(A); severe or pervasive; retaliation; R.C. 4112.02(I); termination; voluntary resignation; failure to investigate; aiding and abetting retaliation; R.C. 4112.02(J).*

Trial court did not err in granting summary judgment in favor of

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appellees on appellant's claims of a hostile work environment in violation of R.C. 4112.02(A), retaliation in violation of R.C. 4112.02(I) and aiding and abetting retaliation in violation of R.C. 4112.02(J).

Where credit union employed four employees in Ohio at the time of the alleged racial harassment at issue, credit union was an employer for purposes of appellant's hostile-work-environment claim under R.C. 4112.01(A)(2) and 4112.02(A).

Even assuming appellant, a white woman, subjectively perceived her workplace to be a racially hostile work environment, there was no genuine issue of fact that a reasonable person would not find appellant's work environment to be objectively racially hostile. The evidence appellant presented involving black coworkers' discussion of race and race-related current events following the murder of George Floyd, offhand comments relating to race and the playing of videos of protests of violence against blacks, which appellant stated made her uncomfortable, was not sufficiently severe or pervasive to create an objectively racially hostile work environment.

Because the only reasonable conclusion that could be drawn from the evidence was that appellant voluntarily quit her employment at the credit union and appellant did not present evidence showing a causal connection between her filing a discrimination charge with the Ohio Civil Rights Commission and the credit union's alleged mishandling of her account funds, appellant could not recover on retaliation claims against the credit union.

Appellant could not prevail on retaliation claim based on appellee's failure to investigate her harassment complaint because the alleged failure to investigate was not separate from the alleged uninvestigated complaint but was, in fact, the same harassment complaint.

Given that appellees were entitled to summary judgment on appellant's retaliation claims, appellant's claims of aiding and abetting that retaliation necessarily fail as a matter of law.

113119 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GREGORY L. CASSTEVENS

Affirmed.

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

KEY WORDS: Consecutive sentences.

The court made the appropriate statutory findings under R.C. 2929.14(C)(4) both in open court and on the record when imposing consecutive sentences.

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113212 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C.K.

Affirmed.

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

KEY WORDS: *Rape; penetration; anal; age; child; sufficient; manifest weight; juvenile; adjudication; disposition.*

The juvenile's adjudication was supported by sufficient evidence and was not against the manifest weight of the evidence.

113215 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSE CONTES

Affirmed and remanded.

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

KEY WORDS: *Consecutive sentences; maximum sentences; statutory findings; nunc pro tunc; R.C. 2953.08(G)(2); R.C. 2929.14(C)(4); ineffective assistance of counsel; interpreter; hearing impaired.*

The trial court properly made the requisite statutory findings in the record to satisfy the requirements of R.C. 2929.14(C)(4) to impose consecutive sentences; however, the court's judgment entry does not reflect the findings made in open court. The convictions and consecutive sentences are affirmed, but the case is remanded for the limited purpose of the trial court to issue a nunc pro tunc to correct its journal entry to match the findings made in open court pursuant to R.C. 2929.14(C)(4). The imposition of maximum sentence was proper and upheld. Last, trial counsel was not ineffective for failing to secure an interpreter or hearing-impaired assistance when defendant never requested these aids and nothing in the record indicates defendant was unable to understand or hear during the proceedings.

113283 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE D.D.J.

Affirmed.

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

KEY WORDS: *Legal custody; R.C. 2151.23; R.C. 3109.04 best interest of the child; abuse of discretion.*

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The trial court considered the evidence presented at trial and explicitly applied the pertinent factors under R.C. 3109.04(F)(1). Assessing the credibility of the witnesses, the trial court found mother's allegations of sexual and physical abuse unsubstantiated and that mother's persistent allegations despite the lack of proof are counter to the child's best interest. Having reviewed the record and testimony presented in this case, we decline mother's request to independently review the credibility of the witnesses and conclude that the trial court did not abuse its discretion in awarding legal custody to father

113368 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v K.O.

113369 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v K.O.

113370 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v K.O.

Reversed and remanded.

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

KEY WORDS: *Application for sealing record; R.C. 2953.32; convictions of more than two third-degree felonies.*

Trial court's granting of defendant's motion to seal record of conviction is reversed. Per the plain language of the statute, R.C. 2953.32 does not apply to convictions of more than two third-degree felonies.

113388 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CURTIS HARRIS

Affirmed.

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

KEY WORDS: *Rape; R.C. 2907.03(A)(2); sufficiency; Crim.R. 29; manifest weight.*

The defendant's conviction for rape was supported by sufficient evidence where the victim testified that, after consensually cuddling with the defendant, the defendant forcibly compelled sexual conduct over the victim's objections by grabbing her wrists, strangling her by the neck using both hands, putting his weight on her, removing her pants and penetrating her. The conviction was not against the manifest weight of the evidence. While the two had

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a history of consensual sexual encounters and had exchanged flirtatious electronic messages before the encounter at issue, the victim's testimony about the assault was not significantly contradicted by other evidence in the record. This is not the exceptional case where the evidence weighs heavily against a conviction. Judgment affirmed.

113392 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHIH-WEI HSU

Affirmed.

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

KEY WORDS: Sufficiency of the evidence; promoting prostitution; R.C. 2907.22(A); possession of criminal tools; circumstantial evidence; establishing, maintaining, supervising, or operating a brothel; supervising, managing, or controlling the activities of a prostitute; manifest weight of the evidence; merger; allied offenses of similar import; R.C. 2941.25; offenses committed separately; different animus.

Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence. In addition, the trial court did not err in declining to merge the two separate offenses of promoting prostitution for purposes of sentencing because the offenses were not allied offenses of similar import.

113401 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MIRANDA MONTGOMERY v EXCHANGEbase, LLC, ET AL.

Affirmed.

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

KEY WORDS: Summary judgment; Civ.R. 56; expanding allegations on summary judgment; disparate treatment sex discrimination; hostile work environment; constructive discharge; appellant's burden on appeal; App.R. 12(A)(2); App.R. 16(A)(7).

It was appellant's burden, as the appellant, to affirmatively demonstrate reversible error in the record and to substantiate her arguments in support thereof. Appellant did not show that the trial court erred in granting summary judgment in favor of appellees on appellant's claims of sex discrimination, hostile work environment, constructive discharge, violation of public policy, or intentional infliction of emotional distress.

Appellant made no mention of her claims for violation of public policy or intentional infliction of emotional distress in her appellate

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brief. As to her remaining claims, while appellees met their burden under Civ.R. 56(C), presenting evidence of specific facts in the record demonstrating their entitlement to summary judgment based on the lack of evidence of essential elements of each of appellant's claims, appellant did not meet her reciprocal burden of demonstrating the existence of a genuine issue of material fact for trial on her claims. Appellant did not apply the applicable legal standards and did not show, based on evidence in the record, that a reasonable factfinder could find in favor of appellant on her sex discrimination, hostile work environment, or constructive discharge claims. Review of the record did not reveal any genuine issues of material fact that would preclude summary judgment in favor of appellees.

113428 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SEAN QUELLOS, ET AL. v RONALD JOHNSON, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; savings statute; R.C. 2305.19; one-use restriction; substantially similar claims.*

Summary judgment affirmed where plaintiffs' third complaint was barred by the one-use restriction that prohibits more than one use of the savings statute to refile a complaint.

The allegations in plaintiffs' third complaint are substantially the same as those alleged in their prior two complaints and are, therefore, barred by the one-use restriction applicable to the savings statute.

113454 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERNEST BATES

Affirmed and remanded.

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

KEY WORDS: *Formal withdrawal of not guilty pleas; acceptance of guilty pleas; R.C. 2929.14(C)(4); consecutive-sentence findings; clearly and convincingly unsupported by the record.*

Trial court did not err in accepting defendant's guilty pleas notwithstanding defendant's failure to formally withdraw his previously entered not guilty pleas. By knowingly, intelligently and voluntarily pleading guilty to the charges at issue in connection with his negotiated plea agreement, defendant withdrew his previously entered not guilty pleas.

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The record did not clearly and convincingly fail to support the trial court's findings in support of the imposition of consecutive sentences.