

CASE DECISION LIST

June 13, 2024

112658 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
PERPARIM MALAJ v YOUSEF I. ABEID

Affirmed.

Eileen A. Gallagher, P.J., and Anita Laster Mays, J., concur; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: *Motion to vacate judgment; Civ.R. 60(B); default judgment; service by publication; reasonable efforts; concealment to avoid service.*

The trial court did not abuse its discretion when it denied the defendant's motion to vacate a default judgment, where service by publication had been authorized and properly effected. The record reasonably supported a conclusion that the defendant left the state and concealed his whereabouts to avoid service and that the plaintiff used reasonable diligence to ascertain his residence before resorting to service by publication. The defendant's argument based on the statute of limitations was also rejected, since that is an affirmative defense that cannot be raised where a defendant never appears and instead defaults.

112690 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHARNISHA WILSON

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Double homicide; murder; R.C. 2903.02(A); R.C. 2903.02(B); felonious assault; R.C.2903.11(A)(1)-(2); bench trial; manifest weight of the evidence, insufficient evidence; complicity theory; circumstantial evidence.*

Defendant-appellant was convicted at a bench trial of two homicides and various assaults that stem from two separate instances. We find on review that the state presented sufficient evidence in the first instance that the defendant was complicit in the first murder and related felonious assault charges. However, we find the state failed to present sufficient evidence for the second murder and related felonious assaults charges. Appellant's convictions as to the first murder and related assault charges are sustained. Appellant's convictions for the second murder and assault charges are vacated. All remaining convictions are affirmed. Case remanded to the trial court for resentencing.

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112795 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v STEAVEN CAWTHORNE

Affirmed.

Kathleen Ann Keough, A.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

KEY WORDS: *Aggravated murder; plea; firearm specification; Crim.R. 11(C)(2) and (3); maximum fine; harmless error; plea colloquy; prejudice.*

Appellant's mid-trial change of plea upheld. Crim.R. 11(C)(3) only applies to aggravated murder with a death specification. Trial court complied with Crim.R. 11(C)(2) in accepting appellant's guilty plea to the firearm specification attendant to the aggravated murder offense. Trial court's incorrect advisement regarding the maximum fine was harmless error because the court found appellant indigent and did not impose a fine. Trial court's run-on advisement of appellant's constitutional rights during the plea was not in error because the manner in which the court provided the statement was effective; appellant was not prejudiced.

112907 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL GOLDSTEIN v SABER HEALTHCARE GROUP, LLC, ET AL.

Vacated and remanded.

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

KEY WORDS: *R.C. Chapter 2711, arbitration, reconsideration, jurisdiction.*

The trial court lacked jurisdiction to reconsider a final appealable order denying a motion to compel arbitration and stay the proceedings.

112933 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KURT STEIGERWALD, ADMINISTRATOR v CITY OF BEREA, ET AL.

Reversed and remanded.

Anita Laster Mays, J., and Kathleen Ann Keough, A.J., concur; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: *Summary judgment; genuine issues of material fact.*

The appellees' summary judgment motion was improperly granted because there are genuine issues of material fact for trial.

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112944 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v EMMANUEL JACKSON

Affirmed.

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

KEY WORDS: *Motion for leave to file motion for new trial; Crim.R. 33; abuse of discretion.*

The trial court did not abuse its discretion when it denied Jackson's motion for leave to file an untimely motion for new trial without hearing because the motion on its face does not support Jackson's claim that he was unavoidably prevented from discovering the evidence within the prescribed time.

112953 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRIAN ALLIE

Affirmed.

Kathleen Ann Keough, A.J., Michelle J. Sheehan, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Illegal use of a minor in nudity-oriented material; R.C. 2907.323; photographs; unknown females; unknown ages; lay witness testimony; Evid.R. 402, 403, 602, and 701; prosecutorial misconduct; closing argument.*

Appellant's convictions for illegal use of a minor in nudity-oriented material, in violation of R.C. 2907.323, upheld where jury viewed the photographs of the unknown females and could determine whether they were minors. Detective's opinion testimony that was based on his training and experience in analyzing, detecting, and deciphering child pornography was relevant and admissible under Evid.R. 402, 602, and 701. Prosecutor did not engage in misconduct during her rebuttal closing arguments when her comments refuted appellant's closing argument and were based on the evidence presented.

112983 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TREASURER OF CUYAHOGA COUNTY v NADRA HENEN, ET AL.

Affirmed.

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

KEY WORDS: *Material breach; essential terms; substantial performance; land-purchase contract; foreclosure; de novo; manifest weight; abuse of discretion.*

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(Case 112983 continued)

Trial court properly ordered foreclosure of the premises pursuant to the terms of the land contract, as a result of appellant's breach. A de novo review of the undisputed facts found that appellant materially breached the land contract. The trial court did not abuse its discretion ordering the foreclosure pursuant to the terms of the contract. The trial court's finding that appellant failed to prove his breach-of-contract, fraud, and partition claims was not against the manifest weight of the evidence.

113048 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
NORTHERN FROZEN FOODS, INC. v JOSEPH SAADEY, DBA, THE UPSTAIRS RESTAURANT

Affirmed.

Mary Eileen Kilbane, P.J., Mary J. Boyle, J., and Anita Laster Mays, J., concur.

KEY WORDS: Civ.R. 60(B); motion to vacate; Civ.R. 58; Civ.R. 5; service; abuse of discretion.

While the delay between trial and judgment was extraordinary, the trial court did not abuse its discretion in denying appellant's Civ.R. 60(B) motion to vacate judgment.

113088 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DAVID HOPKINS v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

Affirmed.

Emanuella D. Groves, J., and Michelle J. Sheehan, P.J., concur; Eileen T. Gallagher, J., dissents (with separate opinion).

KEY WORDS: Political subdivision; immunity; final judgment; journalized entry; abuse of discretion; discovery; jurisdiction; due process; deadline; affirmative defense.

The trial court did not abuse its discretion when it refused to consider appellant's untimely immunity defense. Appellant's motion for summary judgment, alleging the affirmative defense of political subdivision immunity, was filed without leave of court and provided the nonmoving party insufficient time to respond. The trial court has inherent authority to manage its docket, absent an abuse of discretion. Appellant did not request a continuance of the trial date and consideration of the motion would have prejudiced appellee.

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113093 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

IN RE: M.I.

Affirmed.

Emanuella D. Groves, J., and Eileen A. Gallagher, P.J., concur; Eileen T. Gallagher, J., concurs (in judgment only).

KEY WORDS: *In-court identification; gun; felony assault; firearm specification; sufficient evidence shooter; reasonable doubt; trial court erred; beyond reasonable doubt; manifest weight; adjudication; delinquency; assignment; weight of the evidence; testify; manifest weight of the evidence; discharge; no pretrial identification procedure; prohibition; premises; burden of production; trier of fact; conviction; circumstantial element of the offense; witness testimony.*

The trial court erred by admitting unreliable in-court identification of the juvenile defendant when no pretrial identification procedure was at issue. The error was harmless because the remaining evidence supported the delinquency adjudications of felonious assault, one- and three-year firearm specifications, and discharge of a firearm on or near a prohibited place.

113262 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob

ELIZABETH ANNE CASTON, ADMINISTRATRIX v
THE WOODLANDS OF SHAKER HEIGHTS, ET AL.

Reversed and remanded.

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

KEY WORDS: *Motion to enforce arbitration; arbitration agreement; valid contract; apparent authority or apparent agency; burden of proof; equitable estoppel; moot; implied authority; survivorship claim; de novo review; principal; agent.*

The trial court erred when it granted defendants-appellees' motion to stay proceedings and compel arbitration of plaintiff-appellant's survivorship claim where the record did not establish that the nursing home resident cloaked her daughter with authority to execute a binding arbitration agreement. The acts of the nursing home resident, not the daughter, would have created apparent authority. The party asserting the presence of agency - the nursing home in this instance - had the burden to show apparent authority existed. The record is devoid of evidence that the nursing home resident knew about the arbitration agreement or held her daughter out as possessing sufficient authority to bind her mother to the arbitration agreement. Absent the daughter's apparent authority to execute the arbitration agreement on behalf of her mother, the resident was not bound by the arbitration agreement.

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113263 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSEPH MIKLAVCIC

Affirmed.

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

KEY WORDS: *Attempted felonious assault; clearly and convincingly; maximum sentence; abuse of discretion; ability to pay fine.*

Judgment affirmed. *The record clearly and convincingly supports defendant's 36-month maximum sentence. The trial court did not abuse its discretion in imposing maximum fine because even though the trial court did not specifically inquire into defendant's present and future ability to pay the fine, the record supports it.*

113382 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENNETH HUGHES

Affirmed.

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

KEY WORDS: *Res judicata; aggravated murder; guilty plea.*

Appellant's attempt to address claimed errors in his initial case that were the subject of a direct appeal and multiple subsequent appeals must be barred by res judicata.

With respect to errors in the sentencing entry, the claimed errors were readily apparent and available for challenge during the direct appeal of his convictions. With respect to his challenge to the conviction, appellant raised the issue on direct appeal and his objection was overruled. Appellant's claims are therefore barred by res judicata and his conviction must be affirmed.

113423 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v HENRY HALL

Affirmed.

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

KEY WORDS: *Reagan Tokes Law; indefinite sentences; constitutional challenges; due process; separation of powers; right to jury trial.*

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(Case 113423 continued)

Pursuant to State v. Hacker, 173 Ohio St.3d 219, 2023-Ohio-2535, 229 N.E.3d 38, appellant's constitutional challenges to the indefinite sentencing provisions of the Reagan Tokes Law are overruled.

113479 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: L.H.

Reversed and remanded.

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

KEY WORDS: Permanent custody; termination; parental rights; case plan; reasonable; diligent efforts; findings; manifest weight; visitation; substance abuse.

The trial court's award of permanent custody and termination of appellant's parental rights is against the manifest weight of the evidence.

113525 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: M.F.

Affirmed.

Mary Eileen Kilbane, P.J., Eileen T. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Permanent custody; R.C. 2151.414; best interest; manifest weight of the evidence; hearsay; plain error.

The juvenile court's decision to grant the agency's motion for permanent custody was not against the manifest weight of the evidence where the court made appropriate findings pursuant to R.C. 2151.414 and those findings were supported by clear and convincing evidence. The admission of testimony from the foster father and agency social worker regarding allegations of abuse against Father from his wife did not amount to plain error.