

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 27, 2024

112554 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JAY REALTY, LLC v J.P.S. PROPERTIES DIVERSIFIED, INC.

Reversed and remanded.

Mary Eileen Kilbane, J., and Kathleen Ann Keough, A.J., concur; Lisa B. Forbes, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Nunc pro tunc; motion for summary judgment; deed; restrictive covenant; quiet title action; declaratory judgment; doctrine of merger by ownership; self-termination provision; plain and unambiguous language; additional authority; App.R. 21(I); new assignment of error on appeal.*

The trial court erroneously issued a nunc pro tunc entry to change its ruling on the parties' motions for summary judgment.

Further, the Use Restriction in dispute was not subject to the doctrine of merger by ownership and had not terminated pursuant to the self-termination provision. Therefore, the trial court erred when it granted plaintiff-appellee's motion for summary judgment on the quiet title claim.

Relying on the terms of the Use Restriction, which were plain and unambiguous, the trial court erroneously determined the restriction did not apply to the uses proposed by the plaintiff-appellee and thereby granted summary judgment on the declaratory judgment issue.

At the court of appeals, the defendant-appellant was precluded from arguing a new assignment of error that was not raised in the appellate brief and from introducing new documents - not case law - that were erroneously referenced as additional authorities under App.R. 21(I).

113081 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BANK OF NEW YORK MELLON TRUST COMPANY, N.A. v
UNKNOWN SUCCESSOR TRUSTEE(S) OF THE TALMAGE, ET AL.

Reversed, vacated, and remanded.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Foreclosure order; final order; confirmation order; Civ.R. 60(B) motion; authority to modify judgment; sua sponte.*

Trial court has no authority to sua sponte modify its final appealable order that is neither void nor subject to a Civ.R. 60(B) motion.

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113140 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ALI ALAMI v HASSAN KHALID, ET AL.

Affirmed.

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

KEY WORDS: *Settlement agreement; default judgment; Civ.R. 6(C)(1); may; permissive; mandatory; damages; reasonable certainty; manifest weight; harmless error.*

Trial court properly overruled oral motion for default judgment where defendants appeared in the action, defendants did not waive any defenses, and plaintiff failed to provide written notice of intent to seek default judgment.

Trial court properly denied motion to enforcement settlement agreement even though it made a minor error of law in interpreting the contract because plaintiff failed to prove damages with reasonable certainty.

113242 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KEITH T. MCALPINE

113751 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KEITH T. MCALPINE

Affirmed.

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

KEY WORDS: *Competency to stand trial; R.C. 2945.37(G); abuse of discretion; rape; R.C. 2907.02(A)(1)(b); general verdict; furthermore clause; bench trial; Crim.R. 23(C); R.C. 2907.02(B); “force or threat of force”; R.C. 2971.03(B)(1)(c); R.C. 2901.01(A)(1); “force”; sufficiency; manifest weight.*

The trial court did not abuse its discretion when it found McAlpine was competent to stand trial. In addition, a general finding of guilt in a bench trial is all that is required under Crim.R. 23(C) and that finding encompasses the furthermore clause. We find that there was sufficient evidence of “force or threat of force” as it pertains to H.H. Finally, McAlpine’s convictions are not against the manifest weight of the evidence.

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113256 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
ANDREW W. RENNELL v SUSAN L. RENNELL, ET AL.

Affirmed in part and dismissed in part.

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

KEY WORDS: *Motion to strike; final appealable order; motion to intervene; Civ.R. 24(A); Civ.R. 75(B).*

Granting of a motion to strike a brief in opposition was not a final appealable order. Denial of a motion to intervene in divorce proceedings filed by one of the party's former attorney of record in the case was proper. Under Civ.R. 75(B), intervention pursuant to Civ.R. 24(A) is not allowed in divorce proceedings other than in enumerated limited exceptions, none of which applied to the case at hand.

113285 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAEQWAN CASTRO

Vacated and remanded.

Anita Laster Mays, J., Emanuella D. Groves, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Firearm specification sentence; sentence contrary to law.*

The trial court erred when it ordered the appellee's firearm specification sentence to run concurrently to other sentences from the same indictment, making the sentence contrary to law.

113291 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSHUA HINZMAN

Affirmed.

Anita Laster Mays, J., Emanuella D. Groves, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Evid.R. 103(C)(3); parole revocation; substantial evidence; due process.*

The trial court did not abuse its discretion by allowing witnesses to testify about a surveillance video not entered into evidence as the rules of evidence do not apply to proceedings revoking probation in accordance with Evid.R. 103(C)(3). The trial court did not err in finding the appellant to be a parole violator as there is substantial evidence that the appellant violated his parole by smoking

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(Case 113291 continued)

contraband. The trial court did not violate the appellant's due process rights.

113410 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
GREAT LAKES PETROLEUM CO., INC. v JBI SCRAP PROCESSORS INC., ET AL.

Affirmed.

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

KEY WORDS: Civ.R. 12(B)(6); Civ.R. 10(C); personal guaranty.

The trial court's judgment dismissing the plaintiff's claim against the defendant in his individual capacity is affirmed. The defendant satisfied the formality required to show that he intended to sign the guaranty as an agent of a company rather than be personally liable for its debts.

113474 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHARLENE TINSLEY

Affirmed.

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

KEY WORDS: GSI; sentence; contrary to law; R.C. 2929.11 factors. Judgment affirmed.

Because the defendant's sentence is within the statutory range and the trial court considered the statutory factors when imposing her sentence, we cannot say that the defendant's sentence is clearly and convincingly contrary to law.