

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 5

May 2, 2024

112677 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MASTER NAILS, INC. v MASTER NAILS LANA, LLC, ET AL.

Reversed and remanded.

Anita Laster Mays, P.J., and Kathleen Ann Keough, A.J., concur; Michael John Ryan, J., dissents (with separate opinion).

KEY WORDS: *Subject-matter jurisdiction; jurisdictional priority; whole issue; common pleas; domestic relations; divorce; division of property; tort; injunction; temporary restraining order.*

The plaintiff-corporation filed a complaint in the Cuyahoga County Court of Common Pleas seeking injunctive relief and damages for certain alleged torts, including conversion and fraud. The defendants argued that the court did not have subject-matter jurisdiction by operation of the jurisdictional-priority rule, because there was a pending divorce case in a domestic-relations court between one of the defendants and her husband. That defendant claimed that ownership of the plaintiff-corporation was an issue to be decided in the divorce case. We found that the jurisdictional-priority rule does not apply under the circumstances. The parties and claims were not the same between the two cases. The tort case did not present part of the same whole issue pending in the domestic-relations court. And the domestic-relations court does not have jurisdiction to give the plaintiff the relief to which it may be entitled. Reversed and remanded for further proceedings.

112958 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PAYTON CAMPBELL

Affirmed.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Shooting; attempted murder; self-defense; Crim.R. 29; manifest weight of the evidence; attempted murder; felonious assault; transferred intent; authentication; firearm specifications; consecutive sentences.*

Judgment affirmed. The weight of the evidence supported the convictions. A self-defense claim is generally an issue of credibility and the jury's decision to believe the defendant's self-defense as to one victim but not the other victim was not incredible.

Under the theory of transferred intent, the felonious assault convictions as to the remaining victims were supported by the weight of the evidence. The evidence demonstrates that those victims were innocent bystanders in the crosshairs of the

(Case 112958 continued)

defendant's line of firing.

There was no plain error or ineffective assistance of counsel based on the court's failure to instruct the jury on the concept of transferred intent of self-defense. It is not definitively established in this district that the doctrine of transferred intent applies to self-defense claims. Therefore, such an instruction would have been inappropriate.

The defendant's convictions were supported by sufficient evidence. In regard to one victim, the defendant told her he was shooting at her and would continue to do so. The defendant did continue to shoot at the victim even after she had dropped her weapon. In regard to the other two bystander victims, the evidence was sufficient to support the convictions against the defendant under the theory of transferred intent. Further, circumstantial evidence demonstrated venue.

Statements made and injuries documented by a treating nurse did not have the primary purpose of being testimonial. Rather, they were made for the purpose of medical diagnosis and treatment. There was no violation of appellant's confrontation rights regarding the nurse's testimony and the admission of the medical records.

A witness's testimony that she recognized the scene depicted in a video, recognized the person being videotaped, and that the video was a fair and accurate representation of how the taped person appeared at the time in question was sufficient for authentication.

The imposition of consecutive sentences on the firearm specifications was lawful and appropriate under R.C. 2929.14(B)(1)(g), which creates an exception to the general rule that a trial court may not impose multiple sentences for firearm specifications for crimes committed as part of the same transaction.

113061	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v QUENTIN FIPS			

Affirmed.

Anita Laster Mays, J., and Michelle J. Sheehan, P.J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: Manifest weight of the evidence; consecutive sentences.

The appellant's convictions are supported by the manifest weight of the evidence, and the imposition of consecutive sentences are supported by the record.

CASE DECISION LIST

113099 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
FORSYTHE FINANCE LLC v DANNETTE CHANEY

Affirmed.

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

KEY WORDS: *Retail installment sales contract; motion for judgment on the pleadings; Civ.R. 12(C); R.C. 1307.01; statute of limitations; Article 2 of the Uniform Commercial Code; Article 9 of the Uniform Commercial Code.*

The trial court did not err in granting defendant-appellee's motion for judgment on the pleadings based on the four-year statute of limitations in R.C. 1302.98 that properly governs retail installment sales contracts such as the instrument at issue in this case.

113108 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
W.G. v D.G.

Affirmed.

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

KEY WORDS: *Distribution of marital property; de facto termination date of marriage; R.C. 3105.171(A)(2)(b); abuse of discretion; R.C. 3119.82; award of deduction to nonresidential parent.*

Wife and Husband separated in 2012, and Husband obtained a child support order and paid that order from that time. The parties lived apart and did not intertwine their finances. Husband paid child support from March 23, 2012. The trial court used the date of the child support order as the de facto date of termination of the marriage for the purposes of dividing property and thus awarded Husband his pension, which he obtained interest in after the de facto date of termination. Further, although a disparity in Husband's and Wife's reported incomes existed, the trial court awarded Husband the federal tax deductions for their children.

The date of termination of marriage is presumed to be the date of the final hearing in the divorce case, but the trial court may select dates that it considers equitable in determining the division of marital property pursuant to R.C. 3105.171(A)(2)(b). The trial court did not abuse its discretion by using a de facto date of termination where the parties' finances were not intertwined, they did not seek to reconcile the marriage other than for the sake of the children, where the parties lived apart for years, and husband obtained an order for and continually paid child support for over a decade. Because the trial court did not abuse its discretion by using a de facto termination date, it did not abuse its discretion by awarding Husband the entirety of his pension where he obtained interest in

CASE DECISION LIST

(Case 113108 continued)

the pension after the de facto termination date of the marriage.

R.C. 3119.82 provides that a court may award the ability to claim children as dependents for federal income tax purposes to a nonresidential parent if the court determines it would further the best interest of the children and payments for child support are substantially current. Wife argued that because she is the residential parent and reported a low income, she could be eligible for tax benefits. The trial court did not abuse its discretion in awarding Husband the deductions where Wife did not submit tax returns or other documentation to support her financial situation and the trial court could not determine the effect of awarding her the deductions with any certainty.

113145	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JULIA FLANIK			

Affirmed.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Aggravated robbery; R.C. 2911.01(A)(1); complicit; sufficiency; manifest weight; plain error; codefendant; confront; hearsay; harmless error; plain error; prejudice; cross-examination; duress; jury instruction; ineffective assistance of counsel; merger; firearm specifications.*

Affirmed appellant's conviction for aggravated robbery and the sentence imposed in the case. Sufficient evidence was presented showing appellant was complicit in commission of the offense, and her conviction was not against the manifest weight of the evidence. No plain error occurred as to the admission of certain testimony, and other evidentiary challenges were deemed harmless error. The trial court did not abuse its discretion in precluding questioning on cross-examination that was deemed hearsay, or in refusing to provide a jury instruction on the defense of duress, which was not warranted by the record. Appellant failed to establish ineffective assistance of counsel. The trial court was required to sentence appellant on each of two firearm specifications, notwithstanding merger of the underlying felony offenses.

113159	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DALE ANDERSON, JR.			

Affirmed.

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

KEY WORDS: *Attempted menacing by stalking; maximum prison*

CASE DECISION LIST

(Case 113159 continued)

term; R.C. 2953.08(G)(2); R.C. 2929.11; R.C. 2929.12.

The trial court did not err in imposing a maximum prison term where the sentence was within the statutory range and was not otherwise contrary to law.

113185 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ELVESTER JACKSON

Affirmed.

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

KEY WORDS: Abuse of discretion; mistrial; discovery; sanction; parole; facility; records; hearsay; exception; nonhearsay; unavailable; harmless error.

The trial court did not abuse its discretion by denying defense counsel's request for a mistrial based on an alleged discovery violation. The trial court did not abuse its discretion from excluding a recorded jailhouse phone call from evidence.

113301 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CLEVELAND BROWNS FOOTBALL COMPANY, LLC v ANTONIO'S PIZZA, INC., ET AL.

Affirmed.

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

KEY WORDS: Signatory; arbitration; agreement; jurisdiction; mistake; defense; vacate; appeal; Civ.R. 60(B); confirmation; award; contract.

The trial court did not commit reversible error by denying defendant's motion to vacate the trial court's confirmation order. The trial court did not commit reversible error by denying defendant's motion to vacate or modify an arbitration award.