

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 23, 2024

112830 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN RUEDIGER

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Disseminating matter harmful to juveniles; motion to suppress; waiver of Miranda rights; right to make a phone call; sufficiency of the evidence; manifest weight of the evidence; obscenity; jury instructions; admissibility of photographic evidence; ineffective assistance of counsel.*

Defendant's conviction for disseminating matter harmful to juveniles is affirmed. Suppression of evidence is not the appropriate remedy for failure to allow a phone call from jail. Defendant's text messages to a 13-year-old minor were sexually explicit; therefore, they were obscene as a matter of law. There was conflicting evidence in the record regarding whether defendant knew that the victim was a minor. However, because the defendant saw the victim through a window, the weight of the evidence supports the finding that the defendant knew, or acted recklessly in that regard, that the victim was a minor.

112991 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ALLIED HEALTH & CHIROPRACTIC, LLC, ET AL. v STATE OF OHIO, ET AL.

Affirmed in part and vacated in part.

Frank Daniel Celebrezze, III, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *One-subject rule; logrolling; unconstitutional statute; constitutional challenge; budget bill; justiciability.*

The trial court did not err in finding that R.C. 149.43(A)(1)(mm) and 1349.05 violated Article II, Section 15(D) of the Ohio Constitution ("the one-subject rule") and issuing a permanent injunction barring their enforcement. The circumstances of the enactment of these provisions indicate that these provisions were enacted in violation of the one-subject rule. Even though the contested sections have since been amended, the sections were not reenacted and therefore, the amendments cannot cure an infirmity in their enactment.

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113027 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
EST. OF ROSE CRNJAK, DECEASED, BY LEE CRNJAK v LAKE HOSPITAL SYSTEM INC., ET AL.

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Medical negligence; wrongful death; R.C. 2125.01; R.C. 2125.02; standing; capacity; personal representative; estate; administrator; Civ.R. 15; Civ.R. 17; relation back; statute of limitations; motion for summary judgment; Civ.R. 56; motion for directed verdict; motion for judgment notwithstanding the verdict; closing arguments; abuse of discretion.*

The trial court properly denied defendant-appellant's motion for summary judgment where the plaintiff had standing to commence a wrongful death action. Where the defect in plaintiff's capacity to commence the action was corrected with an amended complaint pursuant to Civ.R. 15, the amended complaint related back to the original filing and the action was therefore not time barred. Likewise, the trial court properly denied defendant-appellant's motion for directed verdict on this basis.

The trial court properly denied defendant-appellant's motion for judgment notwithstanding the verdict where sufficient evidence, including expert testimony, was presented at trial to show that the hospital had inadequate notification policies.

Plaintiff's counsel's comments during closing arguments were not so heinous as to prejudice defendant-appellant and therefore, the trial court did not abuse its discretion in permitting the comments.

113040 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
NOVAK LLP, ET AL. v PROFESSIONAL SOLUTIONS INSURANCE COMPANY

Affirmed in part and reversed in part.

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

KEY WORDS: *Res judicata; summary judgment; claim preclusion; estoppel.*

Trial court appropriately granted summary judgment on claims for supplemental payments and abuse of process on claims that had previously been tried to final judgment in second action involving the same parties.

However, the trial court erred in finding that the litigation foreclosed further litigation where although the claims addressed the same contract it did not address the same underlying facts and had not been litigated in the original action.

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113059 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v STEVEN SMITH

Affirmed.

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

KEY WORDS: *Guilty plea; Crim.R. 11; State v. Dangler; protestation of innocence; Alford plea.*

Judgment affirmed. Defendant's plea was not an Alford plea. At no point during the plea hearing did the defendant assert his innocence in any form or fashion. Rather, when the trial court advised him that by entering a plea of guilty, he would be admitting the charged offenses, the defendant expressed that he understood. Implicit in any Alford plea is the requirement a defendant actually state his innocence on the record when entering a guilty plea. Furthermore, we find that under the totality of the circumstances, the defendant understood the consequences of pleading guilty and that his guilty plea was knowingly, intelligently and voluntarily made.

113065 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GRANT GRIER

Affirmed.

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

KEY WORDS: *Rape R.C. 2907.02(d); manifest weight of the evidence; conflict in testimony; credibility determination.*

Defendant was convicted after trial of rape. Defendant asserted his conviction was against the manifest weight of the evidence because the victim's testimony was incredible and contradicted her prior statements. After a review of the entire record and in considering the victim's credibility, the appellate court did not find the victim's testimony to be so incredible that the jury lost its way in resolving conflicts in the victim's testimony and prior statements. Because of this, the appellate court did not find the conviction to be against the manifest weight or that the case was the exceptional one in which a manifest injustice occurred.

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113104 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICHARD BROWN

Affirmed.

Eileen T. Gallagher, P.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Manifest weight; identity; expert; fingerprint; report; service; experience; training; method; comparison; hearsay; exception; harmless error.*

The defendant's convictions are not against the manifest weight of the evidence. The state complied with the requirements of Crim.R. 16, and the trial court did not abuse its discretion by permitting a city detective to testify as a fingerprint expert. Assuming arguendo that the trial court abused its discretion by admitting hearsay testimony, the introduction of the narrative statement obtained by a SANE nurse was harmless error.

113129 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MATTHEW MILES

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Involuntary manslaughter; felonious assault; having weapons while under disability; plea agreement; jointly recommended sentence; sentence; discretion; more severe; R.C. 2953.02(G); standard of review; court costs; indigent; R.C. 2947.23(A)(1); R.C. 2947.23(C); community work service.*

Affirmed. The trial court retained discretion to impose a sentence that was more severe than the jointly recommended sentence in a case in which appellant, pursuant to a plea agreement, pled guilty to three of six charges, including an amended charge of involuntary manslaughter as well as charges of felonious assault and having weapons while under disability, with the remaining charges being nolle. Upon applying the standard of review under R.C. 2953.02(G), it could not be clearly and convincingly found that the record does not support the sentencing court's findings or that the sentence is otherwise contrary to law. The trial court did not err when it ordered appellant, who was indigent, to pay court costs pursuant to R.C. 2947.23(A)(1), which could be satisfied through community work service.

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113132 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TINA R. HADDAD v NINA M. MAALOUF-MASEK

Affirmed.

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

KEY WORDS: *Summary judgment; Civ.R. 56; tortious interference with expectancy of inheritance; Civ.R. 56(F); request for continuance; unjust enrichment; conversion; R.C. 2307.60(A)(1); constructive trust; accounting; denial of right to remedy; Article I, Section 16 of the Ohio Constitution.*

Because appellant did not seek relief under Civ.R. 56(F), trial court did not err in ruling on appellee's motion for summary judgment even though appellant had not completed all desired discovery.

Trial court did not err in granting summary judgment in favor of appellee on appellant's claim for tortious interference with expectancy of inheritance. Appellant's inheritance under her mother's will, which had been deemed valid in prior will contest action, was limited to \$1 regardless of the amount of assets in her mother's probate estate, and appellant offered no evidence of a promise or other statement by her mother that indicated her intent to gift appellant any particular assets or property or her intent to make appellant a joint owner or beneficiary of any particular asset that would have transferred outside of probate following her death.

Trial court did not err in granting summary judgment in favor of appellee on appellant's claims for unjust enrichment, conversion, damages under R.C. 2307.60(A)(1), or constructive trust/accounting. Appellant's claims for unjust enrichment and conversion were predicated on allegations that appellee did some wrong to their mother or their mother's property. Appellant did not allege any facts that showed that appellant conferred a benefit on appellee, that appellee was unjustly enriched by appellant or that appellee converted any property owned by appellant. Appellant's claim for damages under R.C. 2307.60(A)(1) was based on appellee's alleged theft and embezzlement of their mother's assets, not appellant's assets. The imposition of a constructive trust and a request for an accounting are generally considered to be remedies, not independent causes of action, and appellant had not identified any basis on which appellee could be compelled to account to her, other than in connection with her role in probate court as executor of their mother's estate, which accounting had already occurred and been approved by the probate court.

Where appellant did not seek relief under Civ.R. 56(F) and where trial court properly granted appellee's motion for summary judgment because, based on the evidence presented, there was no genuine issue of material fact that appellant could not prove essential elements of her claims against appellee, trial court's decision to grant summary judgment to appellee did not violate Article I, Section 16 of the Ohio Constitution.

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113143 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AMBUS SHEPHARD, JR.

Affirmed.

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

KEY WORDS: *Sexual assault; two victims; DNA evidence; guilty plea; presentence motion to withdraw plea; consecutive sentence; speedy trial.*

Judgment affirmed. *The trial court did not abuse its discretion by denying the appellant's presentence motion to withdraw his plea. The appellant was represented by competent counsel throughout the proceeding and was afforded a full Crim.R. 11 plea hearing before entering his plea. At the plea hearing, appellant indicated that he understood the nature of the charges and the possible penalties. Appellant was also afforded a complete and impartial hearing on his motion to withdraw his plea. The record further demonstrated that the victims would be prejudiced if, after three years since the charges had been filed against the appellant, he were permitted to withdraw his plea, especially because there was no new evidence that had come to light and DNA evidence tied appellant to the crimes. The record demonstrates that the trial court gave appellant's motion to withdraw his plea full and fair consideration. The request was nothing more than a change of heart, which is insufficient to vacate a plea.*

The sentence was not contrary to law. The trial court's imposition of consecutive terms reflected the harm caused to each of the two victims. The trial court made the required findings for the imposition of consecutive terms, the record supports them, and the sentence was not contrary to law. Further, the trial court imposed sentences within the statutory sentencing ranges and the sentence was not excessive.

Appellant's plea and failure to raise a speedy trial violation in the trial court waives review of statutory speedy trial. Notwithstanding waiver, we find no violation of appellant's statutory right to a speedy trial. Further, under a plain error review for a constitutional speedy trial violation, we likewise find no violation.

113149 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SAADY HASHEM, ET AL. v PERK COMPANY, INC., ET AL.

Affirmed.

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

KEY WORDS: *Trespass; apparent authority; agent; principal; ratification; landlord; possessory interest.*

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(Case 113149 continued)

Trial court properly granted summary judgment in favor of defendant on plaintiffs' trespass claim where the undisputed evidence showed that plaintiffs' tenants gave defendant permission to enter onto the property to dump concrete and plaintiffs received 50 percent of the fees charged for the dumping.

113161 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOVAN L. KIRBY

Affirmed.

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

KEY WORDS: Consecutive sentence; R.C. 2953.08(G)(2); R.C. 2929.14(C); R.C. 2929.11; R.C. 2929.12; ineffective assistance of counsel; waive fine and costs; mandatory.

Judgment affirmed. The record supports the imposition of a consecutive sentence because the trial court engaged in the proper analysis and made all the consecutive-sentence findings required by R.C. 2929.14(C)(4). Furthermore, the court incorporated its statutory findings into the sentencing entry. In addition, the trial court properly considered the R.C. 2929.11 and 2929.12 sentencing factors. The court stated in its sentencing entries that it had "considered all required factors of the law" and the defendant has not affirmatively demonstrated otherwise. Lastly, defense counsel was not ineffective for failing to timely file a motion to waive the drug fine and costs prior to the sentencing hearing because the fine was mandatory and there was evidence defendant had the ability to pay the fine.

113162 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RENDELL BUCKHALTER, SR.

Affirmed.

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

KEY WORDS: R.C. 2945.28; absence of affirmative statement jury sworn in transcript; withdrawal of question during witness examination.

Defendant was convicted of murder and felonious assault at a jury trial. Defendant argued on appeal that the transcript of proceedings did not indicate the jury was sworn pursuant to R.C. 2945.28. The absence in the transcript of an affirmative statement that the jury was sworn is not conclusive evidence the jury was not sworn. The appellate court found that defendant did not show error occurred

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(Case 113162 continued)

where the trial court's journal indicated the jurors were sworn, the trial court reminded the jury of its sworn duty in its instructions, and the jurors signed the verdict forms indicating they were duly impaneled and sworn.

Defendant was arrested after fleeing police. During trial, defense counsel asked a police officer if defendant had any outstanding arrest warrants. The state objected, and after sidebar discussion, defendant's counsel withdrew the question. Defendant argued that the trial court impermissibly prevented the introduction of evidence of warrants. However, defendant could not complain of error where trial counsel withdrew the objection and the trial court did not prevent him from introducing evidence regarding outstanding warrants.

113266	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ANTWAIN JONES, SR.			

Affirmed.

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

KEY WORDS: *Voir dire, probable cause, firearm specifications, firearm, operability, sufficiency, circumstantial evidence, plain error, Crim.R. 29, R.C. 2941.141, R.C. 2941.145, R.C. 2923.11, aggravated robbery.*

Jones's convictions for aggravated robbery with accompanying firearm specifications are affirmed. Jones was not prejudiced by the trial court's incorrect definition of probable cause set forth during the voir dire process. Circumstantial evidence of operability is sufficient.

113270	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MICHAEL BEIDLEMAN			

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Murder; R.C. 2903.02(A); discovery; ineffective assistance of counsel.*

Affirmed. Trial counsel was not ineffective for failing to procure forensic testing results because those results were produced by the state during pretrial discovery and before the defendant pleaded guilty to the single count of murder after receiving the testing results.

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113278 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: S.L.

Affirmed.

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

KEY WORDS: *Temporary custody; neglected; dependent; motion for legal custody; legal custody; protective supervision; R.C. 2151.353(A); R.C. 2151.353(F)(1); R.C. 2151.353(F)(2); Juv.R. 20(B); Civ.R. 5(B); service; counsel; ineffective assistance; change of circumstances; dispositional hearing; best interest; factors; preponderance of the evidence.*

Affirmed juvenile court's judgment that adopted the magistrate's decision and committed the minor child to the legal custody of the child's father with protective supervision to the Cuyahoga County Division of Children and Family Services. After the child was adjudicated to be abused and neglected and eventually placed in the legal custody of mother with protective supervision, the juvenile court retained continuing jurisdiction over the child pursuant to R.C. 2151.353(F)(1). Mother's counsel was properly served with father's motion for legal custody in accordance with Juv.R. 20(B) and Civ.R. 5(B), personal service upon mother was not required, and mother's claims of ineffective assistance of counsel and of a lack of change of circumstances failed. Pursuant to R.C. 2151.353(F)(2), the juvenile court was to treat the hearing on father's motion "as if the hearing were the original dispositional hearing." The juvenile court considered relevant best-interest factors, and its determination was supported by a preponderance of the evidence.

113357 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob

BENTON VILLAGE CONDOMINIUM OWNER'S ASSOCIATION, INC v
HOLDINGS, JRG LTD, ET AL.

Affirmed.

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

KEY WORDS: *Condominium lien; statute; declaration; bylaws; contract; interpretation; de novo; summary judgment; mitigation; damages; attorney fees; legal costs; interest; conditions precedent; burden; material fact.*

The trial court did not err by granting summary judgment in favor of the condominium association on its complaint for foreclosure while denying the unit owner's competing motion for summary judgment.

CASE DECISION LIST

113358 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
VICTOR GOZION, JR. v CLEVELAND SCHOOL OF THE ARTS BOARD OF TRUSTEES

Affirmed.

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

KEY WORDS: *Civ.R. 12(B)(6); breach of contract; oral contract; statute of limitations; fraud.*

Appellant's complaint on its face conclusively demonstrates that his breach-of-contract claim was barred by the applicable statute of limitations and his fraud claim was appropriately dismissed because he failed to plead the claim with sufficient particularity as required by Civ.R. 9(B). Consequently, we affirm the trial court's judgment granting a motion to dismiss filed by appellee Cleveland School of the Arts Board of Trustees

113447 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.L.

Affirmed.

Michael John Ryan, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Permanent custody; child cannot be placed with either parent within a reasonable time or should not be placed with the parents; failure to remedy; lack of commitment; abandonment; best interest determination; clear and convincing evidence; manifest weight of the evidence; extension of temporary custody; termination of custody when child reaches age of majority. Judgment affirmed. The juvenile court's judgment granting permanent custody of the child clearly and convincingly was supported by the weight of the evidence. Several of the provisions under R.C. 2151.414(E) applied and, thus, the trial court was required to find that the child cannot be placed with Mother within a reasonable time or should not be placed with Mother. Further, the juvenile court's best interest finding was supported by clear and convincing evidence. Because Mother had not made significant progress on her case plan, a first extension of temporary custody could not have been ordered and would not have been in the best interest of the child. The juvenile court lost jurisdiction over Mother when she turned 18 years old and none of the very limited exceptions under R.C. 2151.353(F)(1) applied to allow it to continue jurisdiction over her.*