

CASE DECISION LIST

November 14, 2024

113316 CLEVELAND HTS. MUNI. C Criminal Muni. & City
CITY OF CLEVELAND HEIGHTS v MONCY SWINNEY

Affirmed.

Lisa B. Forbes, P.J., Mary J. Boyle, J., and Michael J. Ryan, J., concur.

KEY WORDS: *First Amendment to the United States Constitution; Ohio Const., art. I, § 7; Evid.R. 610; religious practices; cross-examination testimony; structural error; plain error.*

Defendant-appellant appeals his bench trial conviction. At trial, appellant took the stand and on direct examination testified that he could not have committed the crime because he was at home, as he is every Friday, preparing to celebrate the Sabbath the next day. On cross-examination the prosecutor then inquired briefly into appellant's religion to flesh out appellant's alibi.

Appellant argued on appeal that alleged the cross-examination between him and the prosecutor infringed on his constitutional rights to freedom of religion under the First Amendment of the United States Constitution and Ohio Const., art. I, § 7. Appellant argued the exchange amounted to a structural error and a plain error.

On review, we find the exchange between appellant and the prosecutor was not a constitutional structural error nor was it plain error.

Appellant's assignments of error are overruled.

113681 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ARLENE PINCUS v ROBERT DUBYAK, ET AL.

Affirmed in part, reversed in part, and remanded.

Michael John Ryan, J., Emanuella D. Groves, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Legal malpractice; power of attorney; saving statute; motion for summary judgment; standing; privity; malice; de novo review; R.C. 2305.11; receiver; damages; proximate cause; duty.*

The trial court erred in granting summary judgment in favor of appellee on claims for legal malpractice. Appellant was able to establish that she had an attorney-client relationship with appellee so that the refiling of her complaint was not untimely. Questions of fact remain whether appellee breached his professional duty to appellant and whether appellee's decision not to file a motion to appoint a receiver were the proximate cause of appellant's

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(Case 113681 continued)

damages.

Appellant did not contest the trial court's grant of summary judgment on her deceased husband's claims; therefore, the grant of summary judgment as to those claims is affirmed.

113704 CLEVELAND MUNI. G Civil Muni. & City
SHANITA BLAND, ET AL. v BUILDING FOR THE FUTURE LLC, ET AL.

Reversed and remanded.

Mary J. Boyle, J., and Eileen T. Gallagher, P.J., concur; William A. Klatt, J.,* dissents (with separate opinion).

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: Magistrate's authority; Civ.R. 53; magistrate's order; magistrate's decision; plain error.

Judgment reversed and remanded. Because the magistrate exceeded the magistrate's authority when it granted default judgment against the appellants and dismissed appellants' counterclaim by way of a magistrate's order, it was error for the trial court to deny appellants' "objections." Further, the subsequent ruling by the trial court adopting the magistrate's decision regarding damages was plain error because it was premised on the erroneous magistrate's order.

113780 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v OWEN WAGNER

Affirmed.

Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur; Mary J. Boyle, J., dissents (with separate opinion).

KEY WORDS: Guilty plea; alleged breach of plea agreement; plain error.

The victim asked for consecutive sentences when she gave the victim-impact statement at the sentencing hearing, even though neither the State nor the victim was to ask for prison time under the plea agreement. Reviewing the claim for plain error, we conclude appellant failed to demonstrate that the trial court would not have imposed a prison sentence but for the victim's request.