

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 31, 2024

113273 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LESHAWN MEDLOCK

Affirmed.

Mary J. Boyle, J., and Lisa B. Forbes, P.J., concur; Anita Laster Mays, J., dissents (with separate opinion.)

KEY WORDS: *Alford plea, knowingly, voluntarily, protestations of innocence.*

Judgment Affirmed. *Based on the totality of circumstances, we find that appellant's comment that he was not guilty when asked whether he was satisfied with his attorney, but then immediately reversed his position and acknowledged his guilt throughout the rest of the proceedings, including the sentencing, is not sufficient to trigger a trial court's heightened duty under Alford. Because appellant was not protesting his innocence to the level required under Alford and State v. Padgett, 67 Ohio App.3d 332, 337-338 (2d Dist. 1990), we find that his plea was knowingly, intelligently, and voluntarily entered.*

113340 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHANEL M. SMITH v LINCOLN ELECTRIC COMPANY

Affirmed.

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

KEY WORDS: *Wrongful termination; summary judgment; assault and battery.*

Trial court properly granted summary judgment for appellee on appellant's claims for wrongful termination against public policy where appellant failed to identify a public policy that was applicable to the facts of the case.

Trial court also properly granted summary judgment for appellee on appellant's assault and battery claim where assailant was acting outside of the scope of their employment and there was no evidence that the appellee had ratified the assailant's conduct as necessary to impute the assault and battery to the employer.

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113545 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RAHSAAN MOSBY

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, A.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Cross-examination; victim; bias; manifest weight of the evidence; sexually violent predator specifications; jury waiver; consecutive sentences; cumulative-error doctrine; present ability to pay fine; R.C. 2929.19(B)(5).*

Trial court did not abuse its discretion in limiting defense counsel's cross-examination to comport with the evidence; prosecutor's, State's witnesses', and the judge's use of the word "victim" to refer to the complaining witness was not plain error; defendant's convictions for rape and kidnapping were not against the manifest weight of the evidence; defendant's waiver of a jury trial on the sexually violent predator specifications was made knowingly, voluntarily, and intelligently, and defense counsel's advice to waive a jury trial on the specifications was not ineffective assistance of counsel; trial court's findings regarding the necessity of consecutive sentences were supported by the record; the cumulative-error doctrine did not apply because there were not numerous trial court errors; trial court erred in imposing a fine without considering the defendant's present ability to pay the fine, as required by R.C. 2929.19(B)(5).

113571 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JOHN C. TILTON, ET AL. v ANDY GERONIMO, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; Civ.R. 56(C); breach of contract; unjust enrichment; trespass; fraudulent misrepresentation; consideration.*

Judgment affirmed. Summary judgment was proper when there was no genuine issue of material fact as to the parties' agreement. Appellants agreed to the removal of 16 arborvitae trees so appellees could replace their driveway. Appellees' agreement to forgo expanding their driveway and removing all of the trees lining their property, in exchange for appellants' permission to remove the 16 arborvitaes, was valid consideration. Appellees were not fraudulently induced into this agreement. The agreement, which was expressed in the parties' emails, did not include reimbursement. Because there was a valid contract, the trespass and unjust enrichment claims fail as a matter of law.

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113608 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JARYL GRIFFON

Reversed, vacated, and remanded.

Sean C. Gallagher, J., and Eileen A. Gallagher, P.J., concur; Michelle J Sheehan, J., concurs in judgment only.

KEY WORDS: *Community-control violations; due process; abuse of discretion; drug test; R.C. 2929.13(E)(2).*

The trial court abused its discretion in finding a violation of community-control sanctions because the violation was based on the defendant's alleged violation of protection orders that were not introduced into evidence for the purposes of determining whether his conduct constituted a violation, and a single instance of testing positive for drugs cannot form an independent basis of a violation of community-control sanctions unless the trial court makes the findings under R.C. 2929.13(E)(2) on the record.

113651 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v CITY REDEVELOPMENT LLC

Affirmed in part; reversed in part; and remanded.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Housing court; violations; building code; compliance; community-control sanctions; abuse of discretion; primary goal of misdemeanor sentencing; Jones test.*

Judgment affirmed in part, modified in part, and remanded. The housing court abused its discretion in this case when it prohibited the appellant from selling the subject property and any properties owned by appellant in the city as part of its community-control sanctions when the appellant was in full compliance with the city's code at the time of sentencing. The primary goal of misdemeanor sentencing was satisfied in this matter - the violations were corrected and the Property was brought into full compliance with all building codes. Therefore, the matter is reversed in part and remanded to the trial court to issue a new sentencing entry modifying the appellant's sentence by deleting only the portion of community-control sanctions requiring the appellant to "not to sell, gift, or transfer the properties it owns within the City of Cleveland while on community control without approval of the Court." The remaining portions of the appellant's community-control sanctions are affirmed.

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113688 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KAREEM WALTON

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Aggravated vehicular homicide; aggravated vehicular assault; operating vehicle under the influence of alcohol or drugs; ineffective assistance of counsel; abuse of discretion.*

The then 20-year old defendant, while traveling at a high rate of speed, crashed his vehicle into a tree and three teenage girls died from injuries they sustained and two other people were injured. After his motion to suppress blood alcohol tests was denied, defendant pled guilty to several counts of aggravated vehicular homicide and aggravated vehicular assault as well as operating vehicle under the influence of alcohol or drugs. His convictions were affirmed on appeal, and his motion to reopen appeal was denied. Defendant filed a motion to withdraw his guilty plea alleging ineffective assistance of counsel that was denied.

When a defendant claims ineffective assistance of counsel at the time of a plea, he must show that counsel's performance fell below an objective standard of reasonableness and defendant would have insisted on going to trial. Defendant argued trial counsel was ineffective for failing to pursue a strategy to attack the procedure for blood alcohol testing and had counsel done so, he would have gone to trial.

The trial court did not abuse its discretion by denying the motion to withdraw plea. Defendant did not point to anything in the record to indicate trial counsel had a basis to attack the requirements for blood testing or that such challenge would have resulted in the suppression of the blood test. As such, defendant did not show trial counsel's decision to focus efforts on challenging the results of the blood test itself, not on the procedure, fell below an objective standard of reasonableness. Further, the record did not demonstrate that even had counsel been ineffective, defendant would have gone to trial where other evidence of impairment existed.

113700 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMAL MALONE

Affirmed.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Motion for leave to file a motion for a new trial; hearing; "unavoidably prevented."*

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(Case 113700 continued)

To obtain leave to file a delayed new-trial motion, a defendant must demonstrate by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial. Appellant fails to attest to the circumstances relating to his late discovery of the new evidence other than the fact that he discovered the new evidence in 2023, nine years after his conviction. Furthermore, the alleged new evidence consists of several journal entries and a docket in two cases, which are matters of public record. Appellant's affidavit offered no explanations for his efforts to uncover favorable evidence, the circumstances he discovered the new evidence, or the reasons for the nine-year delay. Because he has failed to demonstrate that he exercised due diligence to uncover the documents that have been in existence for years even before his conviction, we do not find an abuse of discretion by the trial court in denying the instant motion for leave. The trial court similarly did not abuse its discretion in denying appellant's motion without a hearing because he fails to carry his burden of submitting documents that on their face support his claim of being unavoidably prevented from discovering the new evidence.

113716 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
FAST TRACT TITLE SERVICES, INC. v DENVER BARRY

Reversed and remanded.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., Sean C. Gallagher, J., concur.

KEY WORDS: *Civ.R. 12(B)(6); motion to dismiss for failure to state a claim for which relief can be granted; res judicata.*

Trial court erred in dismissing complaint under Civ.R. 12(B)(6) based on res judicata.

113762 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DALE P. HORN v SUSANNE M. DEGENNARO, ET AL.

Affirmed.

Kathleen Ann Keough, A.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Adverse possession; magistrate's decision; objections; Civ.R. 53; transcript of all the evidence; exhibits; independent review; ruling on objections.*

Trial court's decision rejecting the magistrate's decision on an adverse possession claim upheld where the record demonstrates that the trial court complied with Civ.R. 53 in its obligation to conduct an independent review of the magistrate's decision and rule on the objections. Appellant failed to demonstrate error that

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(Case 113762 continued)

the trial exhibits were not part of the record or that the trial court did not consider them in its Civ.R. 53 review.

113860 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: ADOPTION OF R.L.A.

Affirmed.

Michael John Ryan, J., Lisa B. Forbes, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Adoption; adoption petition; R.C. 3107.07(A); consent to adopt; justifiable cause; failure to support; failure to communicate.

The trial court did not err in finding that the biological father's consent to adopt was not required because there was clear and convincing evidence that the biological father had failed to support or communicate with the child in the statutory time period. The biological father had never supported his child and had no communication with the child in several years. There was no evidence that the biological mother or prospective adoptive father substantially interfered in the biological father's attempts to communicate with the child. The biological father offered no evidence of his income during the statutory time frame other than testimony that his income decreased during the pandemic.