

CASE DECISION LIST

September 5, 2024

112947 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DENNIS NASHE

Affirmed, vacated, and remanded.

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

KEY WORDS: *Reversible error; mistrial; improper jury communication; mandatory hearing; voir dire; allied offenses; dissimilar import; separate victims; consecutive sentences; statutory findings; R.C. 2953.08(G)(2); R.C. 2929.14(C)(4); limited remand; judgment vacated.*

The jury during its deliberation was approached by the defendant's family member who communicated with a juror in front of four other jurors. The trial court properly held a hearing and conducted voir dire with the jurors. The jurors stated they were able to be fair and impartial and that this incident would not affect their judgment. As such, it was not reversible error to deny defendant's motion for a mistrial because there was no evidence defendant was prejudiced by the communication.

The trial court properly found that the felonious assault charges and the improper discharge of a firearm over a public roadway were offenses of dissimilar import since they have different victims and therefore they did not merge for sentencing.

The convictions were not against the manifest weight of the evidence because there was clearly substantial evidence upon which a jury could reasonably conclude that all the elements had been proven beyond a reasonable doubt.

Last, the trial court failed to make the requisite statutory findings to satisfy the requirements of R.C. 2929.14(C)(4) to impose consecutive sentences. The case is limitedly remanded for the trial court to make the required statutory findings to support the consecutive sentences.

113286 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BRADLEY W. STITT

Affirmed.

Frank Daniel Celebrezze, III, J., Kathleen Ann Keough, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Felonious assault; plea; Crim.R. 11; claim of innocence; appellate record; factual guilt; ineffective assistance of counsel.*

CASE DECISION LIST

(Case 113286 continued)

Judgment affirmed. Defendant's direct appeal was an improper vehicle for attempting to withdraw his guilty plea or argue his competence because the facts and documents defendant relied on were never made part of the trial court record or afforded consideration by the trial court first through a postsentence or postconviction motion. Additionally, the record as it is before this court did not support that defendant received ineffective assistance of counsel.

113320 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LUIS VEGA-MEDINA

Affirmed in part; vacated in part; and remanded.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Manifest weight; kidnapping; abduction; force; threat of force; ineffective assistance of counsel; violent-offender designation; sentence; R.C. 2929.11; findings; contrary to law.

Defendant's kidnapping and abduction convictions were not against the manifest weight of the evidence where competent, credible evidence showed that defendant's conduct paralyzed the victim with fear and rendered her incapable of escape.

Trial counsel was not ineffective even though he did not impeach the victim on two inconsistencies between her statements to police and her trial testimony because the inconsistencies involved were minor and did not involve facts material to the defendant's conduct and the evidence overwhelmingly supported the defendant's convictions.

The trial court failed to properly designate the defendant as a violent offender because the court failed to comply with the procedure outlined in the violent-offender statute and it was not clear whether the defendant understood his violent-offender duties.

113402 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
T.K. v D.R.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: Civ.R. 53; failure to file objection to magistrate's decision; extension; Civ.R. 53(D)(5); Civ.R. 53(D)(4)(c); "good cause"; error of law or apparent defect; plain error.

Where defendant-appellant failed to object to the magistrate's decision within 14 days; failed to demonstrate "good cause" under

CASE DECISION LIST

(Case 113402 continued)

Civ.R. 53(D)(5); and failed to show there was an error of law or apparent defect related to the magistrate's decision under Civ.R. 53(D)(4)(c), the reviewing court was to consider the matter under the plain-error doctrine. The trial court's miscalculation of the award for dental expenses constituted plain error; the trial court's order on that specific award is reversed and the case remanded. The defendant-appellant's remaining assignments of error did not demonstrate plain error by the trial court and, therefore, we affirm the trial court's adoption of the magistrate's decision on the remaining assignments of error.

113554 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WILLIAM J. GALLAGHER v EDWARD W. COCHRAN, ET AL.

Affirmed.

Frank Daniel Celebrezze, III, J., Michael John Ryan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Motion to strike jury demand; equitable relief; specific performance; statute of frauds; R.C. 1335.05; oral contract for employment; equity stake; dismiss; Civ.R. 41(B)(2); manifest weight of the evidence; competent, credible evidence; formation of contract; offer; acceptance; meeting of the minds; successor liability; mere continuation of seller corporation.*

The trial court did not err in granting appellees' motion to dismiss appellant's claims pursuant to Civ.R. 41(B)(2) or in striking appellant's jury demand and limiting his remedy to specific performance.

113556 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v JONATHAN REDMOND

Affirmed.

Eileen A. Gallagher, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21; abuse of discretion; ineffective assistance of counsel; effective cross-examination; trial preparation; right to testify.*

The trial court did not abuse its discretion when it denied the petitioner's petition for postconviction relief without a hearing. The petitioner failed to present credible evidence outside the record establishing a triable issue of fact as to whether his trial counsel was deficient and whether any deficiency prejudiced him. The trial court found that the self-serving affidavits submitted by the petitioner and the petitioner's mother were not credible, and this finding was within the trial court's discretion. Judgment affirmed.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 4 of 5

113647 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.P.

113993 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: K.K., ET AL.

Vacated and remanded.

Frank Daniel Celebrezze, III, J., Lisa B. Forbes, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Conceded error; in camera review; confidential records.*

Judgment vacated and remanded. The trial court erred in ordering the disclosure of statutorily confidential information without first conducting an in camera review of the records, as is required by this court's precedent.

113708 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
STATE OF OHIO v HOWARD L. DRAKE

Affirmed.

Frank Daniel Celebrezze, III, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Motion to vacate postrelease control; reversal and remand; case reinstated at point in which error occurred; original sentence; statutorily mandated postrelease control; delay; prejudice; laches is not imputable to the government; court has inherent right to control docket and trial schedule.*

The trial court did not err in denying appellant's motion to vacate postrelease control. The term of postrelease control was mandated by statute, and the trial court lacked authority to alter or to eliminate it. Further, appellant was not prejudiced by any delay in adjudicating his case following remand by this court.

113822 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.F., ET AL.

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.414; sufficiency of the evidence; manifest weight of the evidence; two-prong test; clear and convincing evidence.*

CASE DECISION LIST

(Case 113822 continued)

The Cuyahoga County Division of Children and Family Services (“CCDCFS”) presented clear and convincing evidence to establish both prongs of the two-part test enumerated in the permanent custody statute. Accordingly, the juvenile court’s decision is supported by sufficient evidence and is not against the manifest weight of the evidence. Therefore, the trial court did not err when it granted CCDCFS’s motion to modify temporary custody to permanent custody.

113872	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: H.G., ET AL.			

Affirmed.

Sean C. Gallagher, J., Emanuella D. Groves, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Permanent custody; R.C. 2151.353; R.C. 2151.414(A)(2); Juv.R. 4(A); continuance; R.C. 2151.414(B)(1)(d); best interest; R.C. 2151.414(D)(1); R.C. 2151.414(D)(2); clear and convincing; sufficiency; manifest weight.

Affirmed the juvenile court’s decisions granting permanent custody of two children to the agency and terminating father’s parental rights. The juvenile court did not abuse its discretion in denying a continuance of the permanent-custody hearing. The court did not err with regard to its reasonable-efforts findings. The court’s best-interest findings were supported by clear and convincing evidence in the record, the evidence was legally sufficient to support the court’s permanent-custody decisions, and the court’s decisions were not against the manifest weight of the evidence.