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April 10, 2025

113712	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v F.S.			

113713	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v F.S.			

113714	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v F.S.			

Affirmed in part, vacated in part, and remanded in part.

Eileen A. Gallagher, A.J., Michelle J. Sheehan, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Juvenile court; competency hearing; incompetency; competency assumed; ineffective assistance of counsel; sufficient indicia of competency; probable cause hearing; bindover hearing; amenability hearing; moot; abuse of discretion*

Juvenile appellant has three cases in juvenile court that were bound over to adult court. In his first assignment of error appellant appeals his convictions arguing he received ineffective assistance of counsel when his trial counsel failed to raise the issue of his competency in juvenile court prior to an amenability hearing. For his first two cases, there was not sufficient indicia of incompetency such that his counsel was not ineffective for not raising the issue in juvenile court. However, his counsel was ineffective for not raising the issue of competency in his third juvenile case since there was more than sufficient indicia of incompetency at that time such that counsel should have filed a motion in the juvenile court for a competency determination. This assignment of error is sustained in part, vacated in part and remanded in part.

In appellant's second assignment of error he argues the trial court abused its discretion by finding him not amenable to juvenile court and transferring his cases to adult court. We find, for his first two cases that the trial court did not abuse its discretion finding appellant was not amenable and properly transferred the two cases. For this third case we find the abuse-of-discretion determination to be moot, since the third case's amenability finding was vacated and remanded in the prior assignment of error.

113804	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
SURF CITY INVESTORS, LLC v ALI LOFTI-FARD, ET AL.			

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Home equity line of credit, note, mortgage,*

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foreclosure action, action on account, Civ.R. 60(B), relief from judgment, excusable neglect, abuse of discretion, business records, hearsay, relevance, prejudice, Evid.R. 401, 403, 801, 803(3), and 901, authentication.

Judgment affirmed. The trial court did not err when it determined that the case was a foreclosure action. Although a home equity line of credit operates similarly to a credit card, it is secured by a mortgage on property, which gives the lender the ability to foreclose on the property when the debtor defaults. Therefore, the plaintiff-lender was only required to prove the amount of principal and interest due, not a complete payment history with a beginning balance of zero, as appellants contended. Further, the evidence establishing the amount of principal and interest due was properly admitted under the business records exception. Finally, the trial court did not abuse its discretion when it granted plaintiff's motion for relief from judgment finding excusable neglect.

113865	PROBATE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
ARTHUR P. DUECK, ET AL. v JOSEPH KERRIGAN, TRUSTEE, CLIFTON PARK TRUST, ET AL.			

Affirmed.

William A. Klatt, J.,* and Eileen A. Gallagher, A.J., concur; Sean C. Gallagher, J., concurs (with separate opinion).

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

KEY WORDS: *Motion for summary judgment; motion for reconsideration; res judicata; claim preclusion; issue preclusion.*

The trial court did not err in granting the defendants-appellees' motions for summary judgment where the causes of action argued by the plaintiffs-appellants were barred by res judicata.

The trial court did not err in denying the plaintiffs-appellants' motion for reconsideration of the dismissal of Count 2 under its complaint. Pursuant to claim preclusion, Count 2 should have been litigated in a prior lawsuit that shared the same parties and arose from the same occurrence or transaction and, therefore, the claim was barred by res judicata.

113887	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
STATE OF OHIO v ORIE ANDERSON			

Affirmed.

Emanuella D. Groves, P.J., Michael John Ryan, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Petition for postconviction relief; untimely petition;*

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(Case 113887 continued)

R.C. 2953.21; R.C. 2953.23; Brady material; ripeness.

Trial court did not err when it denied appellant's untimely petition for postconviction relief for lack of subject-matter jurisdiction where the petition failed to establish entitlement to consideration as required by R.C. 2953.23(A). Appellant's unsubstantiated and self-serving claim that he did not receive police reports was insufficient to establish that the State suppressed evidence, where the appellant argued in the alternative that he did not receive the police reports, or if he received them, he received ineffective assistance of counsel when his attorney failed to utilize them to impeach the State's witnesses.

Appellant's argument challenging the State's res judicata argument is not ripe for review because the trial court summarily denied the petition and did not reach the merits.

113994	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: D.W.			

113995	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: D.W.			

Affirmed.

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

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

KEY WORDS: Juvenile court; delinquency; amenability; discretionary transfer; bindover; R.C. 2152.12; abuse of discretion.

The juvenile court did not abuse its discretion in denying the State's motion for a discretionary transfer where the court considered the relevant statutory factors in favor of and against transfer and the record reflects a rational basis for the court's findings. The juvenile court did not abuse its discretion in not permitting the detective to testify at the amenability hearing.

114005	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ISMEAL SANCHEZ, JR.			

114011	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ISMEAL SANCHEZ, JR.			

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

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(Case 114011 continued)

KEY WORDS: Sentencing; R.C. 2953.08(G)(2); consecutive sentences; R.C. 2929.14(C); life sentence; clearly and convincingly; necessary.

Judgment affirmed. A sentence of life with the possibility of parole after the statutory time period does not make it unnecessary or prohibit a trial court from ordering consecutive sentences for multiple crimes. Appellant pled guilty to felony murder with a three-year firearm specification in one case and attempted felonious assault and robbery in a second case. The trial court ordered that the sentences be served consecutively. Appellant's consecutive sentence is necessary to protect the public and to punish the appellant and is not disproportionate to the harm caused by appellant and the danger he poses to the public.

114144	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MONTANA WACASEY			

Affirmed.

Sean C. Gallagher, J.; Michael John Ryan, P.J., concurs in judgment only (with separate opinion); Kathleen Ann Keough, J., concurs in judgment only, .

KEY WORDS: Sufficiency; manifest weight; assault; R.C. 2903.13; attempt; physical harm.

Affirmed. For the purposes of R.C. 2903.13(A) committed against a law enforcement officer, the State need not prove that the defendant actually harmed the officer or that the defendant purposefully or intentionally kicked the officer in an attempt to cause harm. Further, based on the evidence that the defendant intentionally bit an officer during a lawful arrest, the State has proven the crime of assault beyond a reasonable doubt.

114169	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: T.P.			

Reversed and remanded.

Kathleen Ann Keough, P.J., Deena R. Calabrese, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: Juvenile court; discretionary bindover; probable cause; grand theft; aggravated robbery; robbery.

Juvenile court erred in finding no probable cause on certain counts of the complaint. The State presented credible evidence to establish probable cause to believe that the then-juvenile committed grand theft, aggravated robbery, and robbery because

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the then-juvenile refused to return the victim's property after the victim revoked his consent and fled the scene with the property after another individual shot the victim.

114187 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: L.H.

Affirmed.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Plain error; Juv.R. 40(D)(3)(b)(iv); adjudication; disposition; R.C. 2151.35(A)(1); R.C. 2151.353(A)(2)(a); temporary custody.*

Judgment affirmed. Mother waived any arguments regarding the juvenile court's dependency finding and fails to argue that the juvenile court plainly erred in adjudicating L.H. dependent on appeal. Accordingly, her challenge to the juvenile court's adjudication of L.H. is overruled. Moreover, Mother did not object to the magistrate's decision recommending temporary custody be granted to the Cuyahoga County Division of Children and Family Services ("CCDCFS") and does not argue on appeal that the juvenile court's adoption of that recommendation amounted to plain error. However, even if Mother's challenge to the trial court's temporary custody determination were properly raised, we decline to find that the trial court plainly erred in granting temporary custody to CCDCFS.

114247 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
STATE OF OHIO v BRANDON BALDWIN

Reversed and remanded.

Kathleen Ann Keough, J., Michael John Ryan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Postconviction-relief petition; R.C. 2953.21(H); findings of fact and conclusions of law; apprise; appellate review.*

Trial court erred in failing to set forth sufficient findings of fact and conclusions of law pursuant to R.C. 2953.21(H) to apprise the appellant of the basis for the trial court's denial of his timely postconviction-relief petition and to facilitate appellate review.

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114258 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEVONTE RAY BURGOS

Affirmed.

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

KEY WORDS: *Appellate review; maximum sentence.*

Appellant claimed that the eight-year prison sentences imposed on his convictions for attempted kidnapping and attempted rape were not supported by the record. This court is without authority to review whether a sentence is supported by the record under R.C. 2929.11 and 2929.12.

114286 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v HARRY HOLLIMAN, JR.

Affirmed.

Kathleen Ann Keough, J., Emanuella D. Groves, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Improper discharge of a firearm on or near prohibited premises; postrelease control; manifest weight of the evidence; offense of violence.*

Judgment affirmed. The jury's verdict finding defendant guilty of a single violation of improper discharge of a firearm on or near prohibited premises was not against the manifest weight of the evidence. The trial court did not err in imposing postrelease control because this court has previously found that R.C. 2923.162(A)(3) qualifies as an offense of violence that allows for the imposition of postrelease control.

114311 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CUMBERLAND LAKEFRONT B, LLC v BLACKWING, LLC, ET AL.

Affirmed.

Michael John Ryan, J., Emanuella D. Groves, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Summary judgment; commercial lease; App.R. 12; App.R. 16; Civ.R. 52; Civ.R. 56; declaratory judgment; breach of contract; tenant improvement allowance.*

Judgment affirmed. This court declines to address assignments of error in which appellants failed to follow the appellate rules and in which have been rendered moot by prior judgments and orders. The

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trial court correctly granted summary judgment in favor of the landlord on the tenant's counterclaims because the tenant was unable to show that it was entitled to tenant improvement funds when the tenant never submitted receipts or invoices for improvements made to the business.

114329 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C.D., ET AL.

Affirmed.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Termination of parental rights; permanent custody; dispositional hearing; R.C. 2151.35; 90 days after filing of complaint; dismiss with prejudice; plain error; hearing must commence; ineffective assistance of counsel; deficiency prejudiced defense; failure to seek writ of procedendo; R.C. 2151.414; statutory timeframe for resolution of motion for permanent custody.*

The trial court did not err in declining to dismiss the case because it did not violate the statutory timeframe. The dispositional hearing was commenced within 90 days of the refiled complaint. Further, Mother's counsel did not demonstrate that her counsel was ineffective for failing to seek a writ of procedendo with regard to the motion for permanent custody.

114341 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
IN RE U.B.

Affirmed.

Michelle J. Sheehan, P.J., Eileen T. Gallagher, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Parental rights; permanent custody; clear and convincing evidence; R.C. 2151.414(D)(2); best interests of the child; manifest weight of the evidence.*

It was not against the manifest weight of the evidence where the juvenile court granted permanent custody of the child to CCDCFS. The juvenile court's findings under R.C. 2151.414(D)(2) were supported by competent and credible evidence. Mother was unable substantially remedy the conditions that caused the child to be placed outside the child's home, which included mental health, substance abuse, and adequate housing concerns. Father was not in contact with CCDCFS, and mother continued to test positive for marijuana, had stopped taking her medications, and had continued to use marijuana to deal with her mental-health issues.

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114447	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ANGELO COLSON			

Affirmed.

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

KEY WORDS: *Community-control-sanction violation; hearing; Crim.R. 32.3; minimum requirements of due process.*

The Sixth Amendment's Confrontation Clause does not apply to community-control-sanction-violation hearings because they are not criminal prosecutions. Hearsay statements were admissible at defendant's community-control-sanctions-violation hearing as long as there was no due-process violation.