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Court of Appeals, Eighth Appellate District

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August 14, 2025

113858	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
HANY ANTON, M.D. v KEITH PETRAS, M.D., ET AL.			

113859	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
HARRY ANTON, M.D. v KEITH PETRAS, M.D., ET AL.			

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Motion for summary judgment; Civ.R. 56; genuine issues of material fact; judgment as a matter of law; de novo review; declaratory judgment; breach of contract; fraud; breach of fiduciary duty; civil conspiracy; operating agreement; limited liability company; derivative lawsuit; indemnification.*

Affirmed in part, reversed in part, and remanded. The trial court did not err in granting summary judgment in favor of defendants-appellees on plaintiff-appellant's claims of fraud, breach of fiduciary duty, and civil conspiracy because no genuine issues of material facts existed supporting the claims and defendants were entitled to judgment as a matter of law. The trial court did not error in granting summary judgment in favor of defendants-appellees on plaintiff-appellant's request for a declaratory judgment because the court was unable to declare that plaintiff-appellant be reinstated as CEO of the limited-liability company where no provision in the law or operating agreement permitted such relief. The trial court did not error in granting summary judgment in favor of defendants-appellees on plaintiff-appellant's breach-of-contract action pertaining to his removal as CEO and request for backpay because no genuine issues of material fact existed supporting such claims and defendants-appellees were entitled to judgment as a matter of law. The trial court did err however in granting summary judgment in favor of defendants-appellees on plaintiff-appellant's claim for breach of contract for failure to indemnify him with respect to attorney fees associated with defending against the derivative suit. Genuine issues of material fact exist as to whether the fees were actually and reasonably incurred such that defendants-appellees had a duty to indemnify.

Motion for summary judgment; Civ.R. 56; genuine issues of material fact; judgment as a matter of law; de novo review; declaratory judgment; breach of contract; fraud; breach of fiduciary duty; civil conspiracy; operating agreement; limited-liability company; derivative lawsuit; indemnification.

Affirmed in part, reversed in part, and remanded. The trial court did not err in granting summary judgment in favor of defendants-appellees on plaintiff-appellant's claims of fraud, breach of fiduciary duty, and civil conspiracy because no genuine issues of material facts existed supporting the claims and defendants were entitled to judgment as a matter of law. The trial court did not err in

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granting summary judgment in favor of defendants-appellees on plaintiff-appellant's request for a declaratory judgment because the court was unable to declare that plaintiff-appellant be reinstated as CEO of the limited-liability company where no provision in the law or operating agreement permitted such relief. The trial court did not err in granting summary judgment in favor of defendants-appellees on plaintiff-appellant's breach-of-contract action pertaining to his removal as CEO and request for backpay because no genuine issues of material fact existed supporting such claims and defendants-appellees were entitled to judgment as a matter of law. The trial court did err however in granting summary judgment in favor of defendants-appellees on plaintiff-appellant's claim for breach of contract for failure to indemnify him with respect to attorneys' fees associated with defending against the derivative suit. Genuine issues of material fact exist as to whether the fees were actually and reasonably incurred such that defendants-appellees had a duty to indemnify.

114423	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
CHRISTINE ZIRAFI, M.D., ET AL. v GREEN MILE ENTERPRISES LLC, ET AL.			

Affirmed.

Kathleen Ann Keough, J., and Eileen A. Gallagher, A.J., concur; Sean C. Gallagher, J., dissents (with separate opinion).

KEY WORDS: *Summary judgment; Civ.R. 56(C); evidence; successor liability; lack of evidence.*

Judgment affirmed. *The trial court did not err in granting summary judgment in favor of appellees where appellees affirmatively demonstrated that appellants did not have any evidence supporting their claims and as such, there is no genuine issue of material fact relating to any of the causes of action in the complaint.*

114461	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v FREDDIE M. DAVIS			

Affirmed.

Deena R. Calabrese, J., Mary J. Boyle, P.J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); R.C. 2953.08(G)(2).*

Affirmed. *The record clearly and convincingly supports the trial court sentencing appellant to 17 consecutive sentences for*

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nonviolent theft offenses where there were 17 individuals and businesses impacted by his two-month crime spree.

114529	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
FRED CERNY, ET AL. v SCOTT ANDREWS, ET AL.			

Reversed and remanded.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Michael John Ryan, J., concur.

KEY WORDS: *Liquidated damages; penalty; cognovit note; settlement agreement; breach of contract; remand.*

The parties entered into a settlement agreement in which Appellants would pay Appellees \$215,000. Appellants breached the agreement. A provision of the agreement provided that upon a breach of the agreement by Appellants, Appellees had the ability to enforce a cognovit note that was executed pursuant to the settlement agreement in the amount of \$465,000 against Appellants. The trial court issued an order enforcing the note against Appellants.

The trial court's judgment was reversed. The provision of the settlement agreement creating the cognovit note is a liquidated-damages clause. While there are generally limited defenses to be raised against the holder of a cognovit note, a cognovit note may not be used to enforce a provision in a settlement agreement in violation of public policy. The trial court did not address this aspect of Appellants' argument. As such, the case is remanded to the trial court to make that determination in the first instance.

114552	PROBATE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
ROBERT L. PAUL v DOROTHEA J. KINGSBURY			

Affirmed.

Anita Laster Mays, J., Emanuella D. Groves, P.J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Damages; prejudgment interest; attorney fees; R.C. 5810.04.*

The trial court did not err when it offset the appellant's damages. The trial court did not err by not awarding prejudgment interest to the appellant. The trial court did not err when it denied the appellant's request for attorney fees under R.C. 5810.04.

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114560 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROBERT JONES

Affirmed.

Lisa B. Forbes, P.J., Michael John Ryan, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Ineffective assistance of counsel, Miranda warnings, custodial interrogation, manifest weight of the evidence, felonious assault, having weapons while under disability.*

Jones appealed convictions for felonious assault and having weapons while under disability, both of which were based on allegations that, after a verbal altercation and physical fight, he fired a gun at victim. Manifest weight of the evidence supported both convictions where neighbor took video of altercation that included sound consistent with a gunshot, victim identified defendant in blind photo lineup as shooter, camera footage showed a man matching victim's 9-1-1 call description of shooter riding a bike away from the scene, and police found a bike of similar description at defendant's workplace. Trial counsel was not ineffective for failing to file motion to suppress police officer body-camera footage that included potentially incriminating statements Jones made before receiving Miranda warnings. The motion to suppress would not have changed the outcome of the case. Jones repeated most of his statements voluntarily after receiving Miranda warnings; other statements were duplicative of other evidence that showed he was present at the scene. Affirmed.

114644 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ROBERT P. WEITZEL v FLIGHT SERVICES & SYSTEMS, INC., ET AL.

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, J., Eileen A. Gallagher, A.J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Summary judgment; partial summary judgment; reconsideration; breach of contract; employment; terminated; breach; genuine issues; parties; individually liable; torts; statute of limitations; savings statute; discovery rule; fraud; time-barred.*

The trial court's decision to grant summary judgment on a claim for breach of a written employment contract was reversed as to one defendant where genuine issues of material fact remained, and the decision was otherwise affirmed. The appellees who were not parties to the employment contract could not be held individually liable. Affirmed the trial court's decision to grant partial summary judgment on several tort claims, and its decision to deny

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reconsideration of that decision. Regardless of whether the savings statute could be applied, appellant's tort claims were barred by the applicable statute of limitations. As to the claims that were based upon fraud, appellant reasonably should have discovered the alleged fraud for purposes of commencing the running of the statute of limitations and could not rely on his own unawareness to establish his claims were not time-barred.

114673	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v TRAMEIKA RIVERS			

Affirmed.

Michelle J. Sheehan, P.J., Sean C. Gallagher, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Sufficiency of the evidence; manifest weight; driving under the influence; failure to control.*

Judgment affirmed. Convictions for driving under the influence and failure to control supported by sufficient evidence and not against the manifest weight of the evidence.

114950	GARFIELD HTS. MUNI.	C	Criminal Muni. & City
CITY OF GARFIELD HEIGHTS v LEONARD D. ROBINSON			

Reversed, vacated, and remanded.

Eileen A. Gallagher, A.J., Sean C. Gallagher, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Pro se litigants; manifest weight of the evidence; menacing.*

Appellant's conviction for menacing is reversed for being against the manifest weight of the evidence in the record, because the victim's statements at trial were not credible.

114985	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v JOSE MARRERO			

Vacated and remanded.

Eileen A. Gallagher, A.J., Michelle J. Sheehan, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Conceded error; Cleveland Municipal Court;*

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(Case 114985 continued)

**Cleveland Cod.Ord. 433.08 - Trick or Stunt Riding Prohibited;
sufficient evidence.**

**On appeal the city concedes that it failed to put on sufficient
evidence to establish that appellant violated Cleveland Cod.Ord.
433.08. Because we find the trial court erred in finding appellant
guilty, we vacate the conviction and remand this matter to the trial
court.**