

February 6, 2025

113524 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
MICHELLE A. HUNTER v HOLDEN K. TROUTMAN

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Divorce; abuse of discretion; financial misconduct; R.C. 3105.171(E); credibility; hidden or nondisclosed income; sale of personal residence; purchase of residence by spouse; attorney's fees; Dom.Rel.LocR. 21; plain error; admission of exhibits; time restrictions on cross-examination; marital property; manifest weight of the evidence; distributive award; spousal support; and R.C. 3105.18.*

The trial court did not abuse its discretion when it found plaintiff-appellant's hidden income constituted financial misconduct. The trial court did not abuse its discretion when it ordered the immediate sale of a personal residence when the house to be sold was encumbered with a mortgage, home equity line of credit, and foreclosure proceedings and both parties had alternate residences. Where two homes situated next door to each other were owned by the defendant-appellee, the trial court did not abuse its discretion when it ordered the sale of one home rather than awarding it to plaintiff-appellant which would have resulted in her continued residence side-by-side with her ex-husband, his girlfriend, and their child. The trial court committed plain error by admitting into evidence an exhibit that was not presented at trial. The trial court abused its discretion when it awarded attorney's fees based upon an exhibit that was not part of the court record.

Where defendant-appellee did not identify the evidence he was prevented from introducing due to the court's time limitations on cross-examination, defendant-appellee did not establish the trial court's time limitations amounted to an abuse of discretion.

The trial court's findings were not against the manifest weight of the evidence where the evidence established real estate holdings, vehicles, and businesses were not marital property subject to division. Subject to R.C. 3105.171(E)(4), defendant-appellee was entitled to a greater division of marital property or a distributive award but not both awards. Consideration of the R.C. 3105.18(C) factors supported the trial court's denial of defendant-appellee's motion for spousal support.

CASE DECISION LIST

113779 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WILLIAM HURDER v THE CONDOMINIUMS AT STONEBRIDGE OWNERS' ASSOC., ET AL.

Appeal voluntarily dismissed by both parties. See entry 581413.

113795 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KEVIN HAYES v MINGO PROPERTIES LLP, ET AL,

Affirmed.

Kathleen Ann Keough, P.J., and Mary J. Boyle, J., concur; Anita Laster Mays, J., dissents (with separate opinion).

KEY WORDS: *Civ.R. 12(B)(6); limited liability partnership; R.C. 1776.36; pierce; fraud; Civ.R. 9.*

Trial court did not err in granting partners' Civ.R. 12(B)(6) motion to dismiss because the plaintiff's complaint failed to state a claim against the individual partners for obligations incurred by the limited liability partnership. The complaint also did not plead fraud with particularity pursuant to Civ.R. 9.

113835 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
GREGORY J. PITRONE v ANNA MARIE PITRONE

Affirmed.

Michael John Ryan, P.J., Anita Laster Mays, J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Modification of spousal award; substantial change in financial circumstances; investment income; sale of business; abuse of discretion.*

Judgment affirmed. The trial court did not abuse its discretion by sustaining appellee's objections to the magistrate's decision. The trial court is the ultimate finder of fact. The magistrate's decision did not turn on a credibility determination and, therefore, the trial court was able to conduct an independent review of the issues.

The trial court's finding that monies from the sale of appellee's business, which happened over two years after the parties' divorce, was investment income excluded from being subject to spousal support calculation, was not an abuse of discretion. The trial court did not abuse its discretion in finding that appellee's income after his retirement constituted a substantial change in his financial circumstances and thus warranted a modification of his spousal support obligation.

CASE DECISION LIST

113837 CLEVELAND HTS. MUNI. C Criminal Muni. & City
CITY OF CLEVELAND HEIGHTS v KEONDRA WHITLOW

Affirmed.

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

KEY WORDS: *Dog bite; failure to control; explanation of circumstances; allied offenses; sentencing; community-control sanctions; waiver; constitutional errors; no-contest pleas.*

Appellant Keondra Whitlow's convictions are affirmed. Appellant waived her right to recitation or an explanation of circumstances. Whitlow's attempts to dispute the legality of her sentence, including her community-control sanctions, are without merit. Whitlow waived her right to contest the sufficiency of the evidence, including whether the subject dog was vicious, when she pled no contest. Whitlow's various other assignments of error are overruled pursuant to the waiver doctrine and for failure to raise the errors for the first time in the trial court.

113841 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v FRANK JACKSON

Affirmed.

Emanuella D. Groves, P.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: *Allied offenses of similar import; merger; ineffective assistance of counsel.*

The trial court appropriately refused to merge offenses where the conduct established that the crimes were committed separately and with separate animus.

Trial court appropriately considered the required factors to impose maximum consecutive sentences. The maximum sentences were within the statutory range and were therefore not contrary to law. Additionally, the trial court made the appropriate findings to impose consecutive sentences.

Appellant failed to establish he received ineffective assistance of counsel when counsel failed to request a competency evaluation based on a probate court finding of guardianship. The standard for competency to stand trial is different from competency determinations in probate court. Where there is no evidence in the record that the appellant was incapable of understanding the proceedings or that he could not assist in his defense, counsel did not err in failing to request a competency hearing.

CASE DECISION LIST

(Case 113841 continued)

Appellant failed to establish he received ineffective assistance of counsel when his new lawyer represented him at a plea hearing without having obtained all of the discovery. Nevertheless, after a guilty plea appellant waived any claim of ineffective assistance unless he established that his counsel's errors rendered his plea infirm. Appellant failed to meet that requirement.

113873 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AUTAVION HOUSTON

Reversed and remanded.

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

KEY WORDS: *Jail-time credit; separate and unrelated cases.*

Trial court erred in awarding jail-time credit to defendant for separate and unrelated cases even though the trial court ordered the defendant to serve those sentences concurrently.

113913 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTONIO OGLETREE

Affirmed.

William A. Klatt, J.,* Emanuella D. Groves, P.J., and Sean C. Gallagher, J., concur.

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

KEY WORDS: *Sufficiency of the evidence; felonious assault; serious physical harm; deadly weapon; scissors; manifest weight of the evidence; credibility.*

The victim's testimony that the offender often carried a knife or screwdriver in his pocket; the offender stabbed her in the face with either scissors or an object pulled from his pocket; the interaction resulted in an injury that required stitches; the offender made several comments that the victim interpreted as threats upon her life; and the responding police officer's testimony that she observed the victim with a severe injury requiring stitches served as sufficient evidence to show the offender used a deadly weapon to cause serious physical harm and support the offender's felonious-assault convictions.

After weighing the evidence and all reasonable inferences and considering the credibility of the witnesses, we find the defendant's convictions of felonious assault were not against the manifest weight of the evidence.

CASE DECISION LIST

113920 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JASON IVERSON

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Sentencing; R.C. 2953.08(D)(3); aggravated murder; life without parole; R.C. 2929.03(A)(1); cruel and unusual punishment.*

Judgment affirmed. *Appellant's sentence of life in prison without the possibility of parole for three counts of aggravated murder is within the statutory range and not reviewable on appeal pursuant to R.C. 2953.08(D)(3). Further, appellant's constitutional claims of cruel and unusual punishment lack merit. Life in prison without the possibility of parole for the murder of three individuals is not disproportionate nor excessive.*

113966 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEON BULGER

Affirmed.

Emanuella D. Groves, P.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: *Postconviction; DNA testing; outcome determinative.*

Judgment affirmed. *The trial court did not abuse its discretion when it rejected Bulger's application for postconviction DNA testing on the basis that exclusion results would not be outcome determinative. In the context of the evidence presented at trial and upon its consideration, we cannot say that there is a strong probability that no reasonable factfinder would have found the defendant guilty of the offenses had exclusion results been presented at trial.*

113999 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: R.O.

114000 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: N.O.

Affirmed.

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

CASE DECISION LIST

KEY WORDS: *Agreed judgment entry; objections; magistrate's decision; transcript; audio recording.*

Appellant did not get leave of court to submit the audio recording in lieu of a written transcript. Because no transcript was submitted to the trial court with appellant's objections to the magistrate's decision, the trial court did not abuse its discretion in summarily overruling the objections. The magistrate and the trial court properly adopted the agreed judgment entry without appellant's signature because the entry conformed with the parties' in-court, on-the-record, agreement of the terms of the parenting plan.

114035 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE N.J.V.

Affirmed.

Michelle J. Sheehan, 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: *Modifications of shared-parenting plans and decrees; R.C. 3109.04; modification in the designation of the residential parent for school purposes; changes in circumstances; best interest of child.*

The trial court erred in finding that mother's motion to change a designation of the residential parent for school purposes is governed by R.C. 3109.04(E)(1)(a), which requires a demonstration of a change in circumstances. The trial court's judgment is affirmed, however, because it denied mother's motion on an alternative ground that the modification would not serve the child's best interest, and our review indicates the trial court did not abuse its discretion in its best-interest finding.

114079 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE I.L.J.

Affirmed.

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

KEY WORDS: *GAL fees; appellate court costs; App.R. 24; Cuyahoga C.P., Juv.Div., Loc.R. 15(D)(4).*

The juvenile court did not abuse its discretion when it granted the GAL's motion for fees and declined to award father appellate court costs. The appellate court has exclusive jurisdiction to award appellate court costs.

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114202 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
AUREL MARGIMAN, ET AL. v TINA DOWDELL

Affirmed.

Deena R. Calabrese, J., Michael John Ryan, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Motion to vacate default judgment; rebuttable presumption; perfected service; Civ.R. 4.1(A)(1)(a); Civ.R. 4.6(D).

The trial court did not abuse its discretion when it denied defendant-appellant's motion to vacate default judgment. Appellant's unsigned affidavit had no evidentiary value; thus, appellant had no evidence to rebut the presumption that service had been perfected.