

CASE DECISION LIST

February 20, 2025

113542 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PERNELL GIBSON

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, P.J., and Michael John Ryan, J., concur; Mary J. Boyle, J., concurs in part and dissents in part.

KEY WORDS: *Crim.R. 29; sufficiency; jail-time credit; other acts; Evid.R. 404(B).*

Trial court did not err in allowing the admission of other acts evidence where the appellant put motive and identity into question by suggesting that he did not commit the crime and establishing a line of questioning that suggested suicide as an alternative.

State met its burden of production to establish the crime of tampering with evidence where there was evidence that an investigation was likely to be implemented and there was evidence that the appellant tried to clean up the crime scene. However, State failed to meet its burden of production with respect to the attendant firearm specification where there was no witness to the crime and no basis to support a finding that appellant had a gun on or about his person at that time.

Trial court correctly noted the amount of jail-time credit but erred when its journal entry did not reflect the jail-time credit established by the appellant's time in jail at the time of sentencing.

113773 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
Dawn Mannion v Thomas P. Mannion

Reversed and remanded.

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

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

KEY WORDS: *Civ.R. 60(A); Civ.R. 60(B); clerical error; nunc pro tunc.*

Substituting one version of the parties' separation agreement with a second, updated version was an improper use of a nunc pro tunc pursuant to Civ.R. 60(A).

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113824 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
REAL ESTATE TAX INVESTORS RETIREMENT EQUITY, LLC v RODERICK BUTLER, ET AL

Affirmed.

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

KEY WORDS: *R.C. 2305.19; savings statute; statute of limitations.*

The trial court did not err when it did not apply R.C. 2305.19 to the appellant's claims, because the appellant failed to follow a court order, and its claims were barred by the statute of limitations.

113894 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
R.E.S. v M.J.M.

113895 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
M.J.M. v R.E.S.

Affirmed.

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

KEY WORDS: *Domestic-violence civil-protection order; evidence; plain error; manifest weight; domestic violence.*

Judgments on competing petitions for domestic-violence civil-protection orders were supported by the manifest weight of the evidence where video evidence established that ex-girlfriend and her new boyfriend were the primary aggressors who attempted to cause harm to ex-boyfriend.

113914 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v BERTRAM HICKS

Affirmed.

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

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

KEY WORDS: *Postsentence motion to withdraw guilty plea; Crim.R. 32.1.*

Because the appellant has not established that a manifest injustice occurred in the sentencing proceedings, the trial court did not abuse its discretion when it denied the appellant's postsentence motion to withdraw his guilty plea.

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113948 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TONYA LOWE v PAM MORSE, ET AL.

Affirmed.

Eileen T. Gallagher, P.J., Anita Laster Mays, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Motion to dismiss; lack of subject-matter jurisdiction; Civ.R. 12(B)(1); de novo review; administrative appeal; right conferred by statute; R.C. 4112.06; 30 days after service by mail; pro se litigant; timing requirements are jurisdictional.*

Appellant's administrative appeal was not filed with the common pleas court within the statutory time period. The court therefore lacked jurisdiction over the administrative appeal and properly dismissed the case.

113963 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DAVID HRINA, INDIVIDUALLY & AS ADMINISTRATOR, ET AL. v KLS MARTIN, L.P., ET AL.

Affirmed.

Sean C. Gallagher, J., Emanuella D. Groves, 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: *Medical malpractice; refiled complaint; jurisdiction; final appealable order; R.C. 2505.02; Civ.R. 54(B); sound judicial administration; Civ.R. 10(D)(2); affidavit of merit; extension of time; circumstances; justify; beyond 90 days; abuse of discretion; motion to dismiss; pending; motion for leave; motion for extension; untimely; due process; notice; opportunity to respond.*

Affirmed the trial court's decision in a refiled medical-malpractice action that denied appellants' motion for leave to file an affidavit of merit and granted appellee's motion to dismiss for failing to file the affidavit. Although the trial court entered final judgment as to fewer than all claims against all parties in this case, there was a final appealable order when the requirements for a final order under R.C. 2505.02 were met, the trial court included the requisite Civ.R. 54(B) language, and the record indicated that the interests of sound judicial administration could be served by a finding of "no just reason for delay." The trial court did not abuse its discretion in denying leave to submit an affidavit of merit after appellants had already been granted a 90-day extension and the circumstances did not justify an extension beyond the 90 days. The trial court did not err by granting the motion to dismiss that was not timely opposed and did not abuse its discretion in denying an extension of time to respond to the motion to dismiss. Appellants were afforded notice and an opportunity to respond, and no denial of due process occurred.

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113976 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MICHAEL SUMLIN

113977 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MICHAEL J. BROWN

Affirmed.

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

KEY WORDS: *Consecutive sentences; awaiting trial; statutory interpretation; under indictment.*

Defendant was under indictment but had not yet been arraigned when he committed criminal offenses in a second case. The court determined that since he was under indictment when he committed the offenses, he was “awaiting trial” as required under R.C. 2929.14(C)(4)(a).

114018 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v NICHOLAS LOMBARDO

Affirmed.

Eileen T. Gallagher, P.J., Anita Laster Mays, J., and William A. Klatt, J.,* concur.

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

KEY WORDS: *Double jeopardy; motion to dismiss; Double Jeopardy Clause; de novo review; multiple prosecutions; mistrial; retrial; prosecutorial misconduct; intended to elicit or cause mistrial; trial court’s findings; inadvertence.*

Appellant failed to demonstrate that his right against multiple prosecutions under the Double Jeopardy Clause had been violated, and the trial court properly denied his motion to dismiss the indictment.

114116 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
IRINA BYKOVA, ET AL. v CLEVELAND DIVISION OF WATER

Affirmed.

Michael John Ryan, J., Michelle J. Sheehan, 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: *Civ.R. 12; judgment on the pleadings; unauthorized*

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(Case 114116 continued)

practice of law; pro se; immunity; R.C. 2744.02.

Judgment affirmed. Pro se appellant may not represent other litigants in lawsuit filed against City of Cleveland. Pro se appellants are held to the same standard as those represented by counsel. The city is immune from liability.

114146	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SHELBY PRESLAR			

Affirmed.

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

KEY WORDS: R.C. 2929.14(C)(4); consecutive sentences; courses of conduct; seriousness of the offender's conduct; history of criminal conduct; clearly and convincingly.

Appellant failed to demonstrate consecutive sentences were clearly and convincingly not supported by the record. Defendant's repeat convictions for identity fraud and theft supported trial court's finding that offender's history of criminal conduct made consecutive sentences necessary to protect the public from future crime. Harm to victim's personal and business credit supported trial court's finding that no single prison term adequately reflected the seriousness of the offender's conduct.