

CASE DECISION LIST

February 27, 2025

113437 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BEST MOTORS, LLC v CHEICK KABA, ET AL.

114145 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BEST MOTORS, LLC v CHEICK KABA, 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: *Summary judgment standard; manifest weight of the evidence; Civ.R. 12(B)(6); motion to dismiss; failure to state a claim; service; leave; counterclaim; Civ.R. 60(B); relief from judgment; bias; disqualification; compensatory damages; punitive damages; fraud; conversion; civil theft; civil conspiracy; breach of contract; used car; open title.*

Trial court's judgment rendered after trial was not inconsistent with prior decision reversing summary judgment where summary judgments and trial verdicts are subject to different standards.

Trial court properly denied appellant's Civ.R. 12(B)(6) motion to dismiss where all the claims in the complaint properly alleged claims upon which relief might be granted.

Trial court properly denied motion for leave to file a counterclaim because it was untimely.

Despite appellant's claims that the trial judge was biased, nothing in the record indicated an unfair bias or that appellant was deprived of his right to fair trial.

Trial court's award of compensatory and punitive damages was supported by the manifest weight of the evidence and is not contrary to law.

Trial court's award of attorney fees was reasonable and supported by the record.

Trial court properly denied appellant's motion to quash the certificate of judgment rendered against him even though it did not issue findings of fact and conclusions of law where findings of fact and conclusions of law were not required.

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113793 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TIRRELL EDWARDS

Affirmed.

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

KEY WORDS: *Objection; abuse of discretion; Evid.R. 613; impeachment by self-contradiction; prior inconsistent statement; Evid.R. 404(B); prior bad acts; prosecutorial misconduct; closing argument; ask jury to make inferences upon evidence; prejudicial; plain error; prosecutor may comment on credibility; ineffective assistance of counsel; failure to raise Daubert challenge; expert scientific testimony; trial strategy; jury is presumed to follow instructions given by trial court; self-defense; separate verdict form; Crim.R. 29; motion for acquittal; sufficiency of the evidence; manifest weight of the evidence; cumulative effect of errors; firearm specifications; consecutive sentences; mandatory; discretionary; R.C. 2929.14.*

The trial court did not err in overruling the defense's objection to the State's characterization of the victim as a battered woman and allowing the State to use text messages between the victim and appellant for impeachment; these did not constitute prior bad acts evidence under Evid.R. 404(B). The trial court also did not err in telling potential jurors they would "become the government" during the trial, or in declining to provide a separate verdict for the self-defense verdict. The court properly imposed consecutive prison sentences on all three firearm specifications.

In addition, the prosecutor did not engage in misconduct in his questioning of appellant or closing argument, and appellant's trial counsel was not ineffective for failing to raise a Daubert challenge or declining to object to certain statements made by counsel for the State. Finally, the verdict was supported by sufficient evidence and not against the manifest weight of the evidence.

113826 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY FARRELL

Affirmed.

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

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

KEY WORDS: *R.C. 2929.19(B)(4); sentencing hearing; violation hearing; community-control sanctions; statutory notice requirements; revocation of community-control sanctions.*

The trial court's failure to issue a sentencing judgment entry that notified the offender of the specific prison term it would impose as

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to each offense should the offender violate his community-control sanctions was not error where the notification at the sentencing hearing complied with the notice requirements of R.C. 2929.19(B)(4). The absence of violation hearings each time the offender violated the conditions of his community-control sanctions did not impact the trial court's satisfaction of the R.C. 2929.19(B)(4) notifications.

113834 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KHAYREE SULLIVAN

Affirmed and remanded.

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

KEY WORDS: *Felonious assault; serious physical harm; self-defense; hung jury; acquittal; collateral estoppel; double jeopardy.*

Trial court did not err in denying appellant's motion to dismiss based on double-jeopardy grounds. The jury's acquittals on certain counts did not decide issues of ultimate fact of self-defense or harm that would invoke the protections of double-jeopardy with a successive prosecution.

113840 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AARON HALL

Affirmed.

Sean C. Gallagher, J., Lisa B. Forbes, P.J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Plain error; jury instruction; in-trial identification; ineffective assistance of counsel; weight of the evidence.*

Affirmed. Defendant has not demonstrated that the failure to give a jury instruction with respect to a pretrial identification or his trial counsel's failure to object to an in-trial identification was in error given the totality of the instructions provided to the jury, and the conviction for felonious assault of a police officer is not against the weight of the evidence presented at trial even if the in-court identification of the defendant as the shooter was ignored.

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113882 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
1215 SUPERIOR, LLC v JACOB BERGER

Affirmed.

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

KEY WORDS: *Breach of contract; guaranty agreement; forbearance agreement; default; consideration.*

Judgment affirmed. The trial court did not err in granting summary judgment to appellees for breach of contract because, contrary to appellant's argument, the guaranty agreement was supported by consideration.

113897 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KAMEREN WHITE

Affirmed and remanded.

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

KEY WORDS: *Double jeopardy; collateral estoppel; res judicata; retrial.*

Defendant was charged in a multicount indictment. He was found not guilty on some of the counts. The jury was hung on the remaining counts. Since none of the remaining counts were necessarily decided on an issue required for a conviction on the remaining counts, double jeopardy did not prevent a retrial on the remaining counts.

113931 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v A.M.

Reversed, vacated, and remanded.

Sean C. Gallagher, J., Emanuella D. Groves, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Conceded error; expungement; R.C. 2953.32; hearing requirement.*

Reversed, vacated, and remanded. The trial court erred by expunging the misdemeanor conviction without first setting and then conducting a hearing in order to make the determinations required by R.C. 2953.32, as well as to provide notice to the State at least 60 days in advance of that hearing.

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113968 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C.G., JR., ET AL.

Affirmed.

Sean C. Gallagher, J., Lisa B. Forbes, P.J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Legal custody; temporary custody; abused; neglected; dependent; substance abuse; fentanyl; R.C. 2151.353(A); R.C. 2151.353(F)(2); dispositional hearing; best interest; preponderance of the evidence; sufficiency; manifest weight.*

Affirmed juvenile court's judgment in each child's case, which adopted the magistrate's decision and committed the minor child to the legal custody of a relative caretaker. The juvenile court's decision was supported by sufficient evidence and was not against the manifest weight of the evidence. The record showed mother had not made significant progress in addressing her substance-abuse issues and serious concerns remained. The juvenile court's best-interest determination was supported by a preponderance of the evidence. The juvenile court properly determined that each child's continued residence or return to mother's home was not in the child's best interest, nor was the continued temporary custody of the child. The record did not support mother's other arguments.

113997 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v JOHN H. WIGGINS

Affirmed.

Deena R. Calabrese, J., Lisa B. Forbes, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Municipal court; assault; bench trial; psychiatric referral; competency; right to trial by jury; misdemeanor offenses; petty offenses; aggregation theory; R.C. 1901.24; Crim.R. 2; Crim.R. 23; Crim.R. 29 motion; venue; 911 call; plain error; hearsay; Confrontation Clause; authentication; sufficiency; manifest weight; sentencing; misdemeanor sentencing; R.C. 2929.27(A); community control; anger-management classes; judicial bias; R.C. 2701.03; affidavit of disqualification; due process.*

Defendant's assault conviction and his misdemeanor sentence, which included a referral to anger-management classes as one of his community-control conditions, were both affirmed. Defendant was presumed competent to stand trial, and the record revealed no indicia of incompetence that would require a competency hearing. The trial court did not err in holding a bench trial because the case involved petty offenses, and defendant failed to file a written jury demand. Defendant's Crim.R. 29 motion based on venue was properly rejected because the victim's testimony indicated the incident occurred in the City of Cleveland. Defendant did not object

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to the admission of the 911 call recording, and there was no plain error in that respect. The 911 call was authenticated by the victim. The case was tried to the bench, and there was no indication that the trial court relied on inadmissible hearsay. Defendant's Confrontation Clause arguments with respect to the 911 call were unavailing because the victim/caller was subject to cross-examination and defendant did not suggest that any dispatcher statements were testimonial in nature. Defendant's assault conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. The trial court did not abuse its discretion in sentencing defendant to community-control conditions that included anger-management classes, which the probation department had recommended. The referral to anger-management classes reasonably related to the goals of community control. Defendant's judicial bias arguments failed because he did not file an affidavit of disqualification and nothing suggested the trial court's behavior rose to the level of a due-process violation.

114052 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SHON BURTON, JR.

Affirmed and remanded.

Lisa B. Forbes, P.J., Sean C. Gallagher, J., and Deena R. Calabrese, J., concur.

KEY WORDS: *R.C. 2929.14(C)(4); consecutive sentences; postrelease control; nunc pro tunc entry.*

Appellant failed to demonstrate consecutive sentences were clearly and convincingly not supported by the record. Defendant admitted at a hearing he committed crimes while on postrelease control for prior offenses. Defendant's repeat convictions supported trial court's finding that offender's history of criminal conduct made consecutive sentences necessary to protect the public from future crime. Remanded to trial court for nunc pro tunc entry clarifying postrelease-control sentence applies only to felonious-assault conviction, instead of to all convictions.

114075 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MIGUEL ANTONIO JIMENEZ

Reversed and remanded.

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

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

KEY WORDS: *Motion to vacate default judgment; Civ.R. 60(B) motion; lack of service; service of process; perfect service;*

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rebuttable presumption; personal jurisdiction; void judgment; vacate judgment; abuse of discretion.

Where the defendant-appellant provided a competent, credible, and uncontested sworn statement that demonstrated he was not served a forfeiture complaint pursuant to the civil rules, the defendant-appellant rebutted the presumption of service. Absent proper service of the complaint, the trial court lacked personal jurisdiction over the defendant-appellant and, therefore, the court's grant of default judgment against the defendant-appellant was void and the trial court's subsequent denial of the defendant-appellant's motion to vacate the default judgment was an abuse of discretion.

114207	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MICHAEL KINCAID, III			

114208	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MICHAEL KINCAID, III			

Dismissed.

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: Anders; wholly frivolous; meritorious; consecutive sentence; guilty plea.

Motion to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), granted where there are no meritorious grounds for appeal.

114220	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
LARS ST. JOHN v UNIVERSITY HOSPITALS, ET AL.			

Affirmed.

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

KEY WORDS: Motion to dismiss.

The trial court did not err when it granted the appellees' motion to dismiss the appellant's complaint.

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114350 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: D.E.

Affirmed.

Sean C. Gallagher, J., Lisa B. Forbes, P.J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Permanent custody; neglected; dependent; substance abuse; R.C. 2151.353(A); R.C. 2151.414(E); R.C. 2151.414(E)(11); R.C. 2151.414(D)(1); legal custody; reversible error; plain error; ineffective assistance; cumulative error.*

Affirmed juvenile court's decision granting permanent custody of the child to the children services agency and terminating mother's parental rights. The juvenile court's decision was supported by sufficient evidence and was not against the manifest weight of the evidence. The court engaged in the proper analysis and made the requisite determinations pursuant to R.C. 2151.353(A)(4) and in accordance with R.C. 2151.414(E) and 2151.414(D)(1) and did not err in denying legal custody to a proposed legal custodian. Though many challenges were raised, no reversible error occurred. Mother failed to demonstrate that the juvenile court committed plain error or that her counsel was ineffective. The cumulative-error doctrine was inapplicable.

114503 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.H.

Reversed and remanded.

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

KEY WORDS: *Legal custody; temporary custody; statutory authority.*

Juvenile court erred when it denied Cuyahoga County Division of Child and Family Service's motion to terminate temporary custody where the child had been adjudicated delinquent and committed to the legal custody of the Department of Youth Services. By statute, the juvenile court had authority to place the child in the legal custody of one agency or the other but not both simultaneously.