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Court of Appeals, Eighth Appellate District

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June 5, 2025

113844	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v RONALD NEWBERRY			

Affirmed.

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

KEY WORDS: *Petition for postconviction relief; res judicata; ineffective assistance of counsel; conflict of interest; Brady violation.*

Appellant convicted for, among other offenses, two counts of murder, petitioned for postconviction relief on basis that his trial attorney provided ineffective assistance of counsel ("IAOC"). IAOC claim was based in part on alleged conflict of interest arising from trial counsel's prior civil representation of officer that lead investigation of these homicides. Trial counsel's prior representation of the lead investigator concerned allegations that he and several other officers had failed to complete required trainings. Appellant also alleged IAOC on the basis that trial counsel failed to cross-examine two officers who investigated these homicides about past failures to complete required trainings. The trial court did not abuse its discretion in denying without hearing appellant's petition on these claims. Trial counsel disclosed to defendant, prior to trial, his prior representation of the investigator and the officer training issues that case involved. Therefore, appellant could have or did raise these arguments on direct appeal, meaning res judicata prevented him from doing so now. Appellant also claimed the State violated Brady v. Maryland during pretrial discovery by failing to disclose to appellant testimony that one of the officers had provided in an unrelated criminal case regarding his training history. The trial court did not abuse its discretion in finding the State did not violate Brady where this testimony was in the public record of the unrelated criminal trial and, therefore, not in the exclusive control of the prosecution.

113877	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v ODELL HARVEY			

114017	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v O'DELL HARVEY			

Reversed and vacated.

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

KEY WORDS: *Community-control sanctions; failure to comply; housing court; community-control-sanctions-violation hearing; community-control-sanctions-status hearing; R.C. 2929.25; due*

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process.

The municipal housing court's jurisdiction to modify the terms of community-control sanctions is limited by R.C. 2929.25(D)(2), which requires a finding that the offender violated the terms of community-control sanctions before extending the length of the sanctions, imposing a more restrictive term, or imposing a jail term. The court in this case modified the defendant's community-control sanctions by extending the sanctions for one year and three days and by imposing five days in jail. However, the court failed to first find that the defendant violated the terms of his sanctions. Furthermore, the court did not comply with the defendant's due-process rights when it spontaneously attempted to "convert" a status hearing into a violation hearing. The court's judgment is reversed and vacated.

114298	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
BROADVIEW RD. HOLDINGS, LLC v 7800 BROADVIEW, INC., ET AL.			

Vacated and remanded.

Eileen A. Gallagher, A.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Civ.R. 12(C); judgment on the pleadings; allegations in the complaint; breach of contract; fraudulent concealment; negligent misrepresentation; merger doctrine; caveat estoppel; as-is clause; R.C. 5301.253.*

Appellant appeals the trial court's grant of appellees' motion for judgment on the pleadings. Reviewing the complaint and answer, we find that appellant properly pled claims for breach of contract, fraudulent concealment and negligent misrepresentation and that the doctrines of caveat emptor and merger, as well as an as-is clause, does not preclude recovery at this stage in the litigation.

114407	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOSE MORALES-RAMIREZ			

Affirmed.

Michelle J. Sheehan, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Restitution; R.C. 2929.18; preponderance of the evidence; victim testimony; owner-opinion rule; unsworn testimony; insurance proceeds.*

Trial court's order of restitution to an arson victim is affirmed. Victim testimony alone can satisfy the requirement that a restitution order be supported by the preponderance of the evidence. Further, victim testimony does not need to be under oath because the Rules

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of Evidence do not apply to sentencing hearings, which include restitution hearings.

114411	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JAVON COOPER			

Affirmed.

Eileen A. Gallagher, A.J., Lisa B. Forbes, J., Anita Laster Mays, J., concur.

KEY WORDS: *Rape; admissibility of evidence; Evid.R. 70; opinion testimony by lay witnesses; delayed disclosures; post-traumatic stress disorder; sufficiency of the evidence; forcible rape; psychological force; manifest weight of the evidence.*

Defendant's conviction for rape of a child under 13 years old is affirmed. The trial court did not abuse its discretion when it allowed three lay witnesses to testify about their opinions pursuant to Evid.R. 701, because the testimony was rationally based on the perception of each witness and it was helpful to the jury. The rape conviction was supported by sufficient evidence in the record. Inconsistent testimony does not factor into a sufficiency analysis, a rape conviction can be based on the victim's testimony alone, and coercion can be inherent in a parental authority scenario. The rape conviction is not against the manifest weight of the evidence in the record. Although the victim testified about sexual conduct that she had not disclosed prior to trial, the defendant was convicted of one rape charge, which was consistent with the victim's disclosure, and acquitted of all other charges.

114457	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v FREDERICK JEFFERSON, JR.			

Affirmed.

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

KEY WORDS: *Discretionary fine; R.C. 2929.19(B)(5); present and future ability to pay; plain error; presentence-investigation report; ineffective assistance of counsel; failure to object.*

The trial court imposed a \$5,000 fine as part of a criminal defendant's sentence. Prior to imposing the sentence, the trial court indicated that it had reviewed the presentence-investigation report. The report included information regarding the defendant's age, education, physical and mental health, and employment history. This information contained in the report is sufficient from which a trial court could reasonably conclude that Jefferson had the ability to pay the imposed fine. As such, it may be inferred that the trial court considered the defendant's present and future ability to

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pay the imposed fine. Defense counsel was not ineffective for failing to object to the imposition of the fine.

114504	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MARVIER BOLDEN			

Reversed and remanded.

Deena R. Calabrese, J., Eileen A. Gallagher, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Sentencing; aggravated robbery; weapons while under disability; failure to comply; R.C. 2921.331(D); plea agreement; community control; mandatory prison term; consecutive sentences; R.C. 2911.01(A)(1); R.C. 2921.331(B); R.C. 2921.331(C)(5)(b); R.C. 2923.13(A)(2); R.C. 2929.11; R.C. 2929.12; R.C. 2929.13; R.C. 2929.14(C)(3); R.C. 2953.08(G)(2); R.C. 2941.141(A); R.C. 2941.145(A); Reagan Tokes; restitution; nunc pro tunc; sentencing entry error; Crim.R. 11(C); Crim.R. 36; App.R. 16(A)(4).*

Judgment reversed and remanded. The trial court erroneously concluded that it was required to impose a prison term for failure to comply under R.C. 2921.331(D) simply because it imposed prison terms on other counts. R.C. 2921.331(D) mandates consecutive service if a prison term is imposed for a violation of R.C. 2921.331(B), but not that a prison term must be imposed. This error, along with ambiguity regarding whether the court believed it was required to impose prison for the offense of aggravated robbery based on the accompanying firearm specification, necessitates a full resentencing. Because the sentences were interdependent, the trial court must resentence on all counts.

In addition, the written sentencing entry did not accurately reflect the trial court's oral pronouncements, particularly as to the length and concurrency of terms on several counts and improperly included a restitution order that had not been announced during the sentencing hearing. While the restitution amount was consistent with the plea agreement, it must be imposed in the defendant's presence.

114646	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE N.C.			

Affirmed.

Mary J. Boyle, J., Emanuella D. Groves, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Parental rights; permanent custody; best interest; manifest weight; R.C. 2152.414; case-plan services; completion.*

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Judgment affirmed. The court's decision to grant permanent custody is not against the manifest weight of the evidence. While the court erroneously granted permanent custody to CCDCFS on the basis set forth in R.C. 2151.414(B)(1)(d), this error is harmless because CCDCFS did not rely on R.C. 2151.414(B)(1)(d) in its motion for permanent custody. Rather, CCDCFS relied on the condition listed in R.C. 2151.414(B)(1)(a) and argued that one or more of the factors listed in R.C. 2151.414(E) apply to the parents of the child at issue. Consistent with CCDCFS's reliance on R.C. 2151.414(B)(1)(a), the juvenile court found under R.C. 2151.414(E) that "the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent," and the juvenile court found multiple factors under R.C. 2151.414(E) were met, including R.C. 2151.414(E)(1) and (E)(4). A parent's successful completion of the terms of a case plan is not dispositive on the issue of reunification. In addition, there is clear and convincing evidence in the record to support the juvenile court's determination that permanent custody to CCDCFS is in the children's best interest.

114690	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
IN RE N.C.			

Affirmed.

Sean C. Gallagher, J., Emanuella D. Groves, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.414(B)(1); R.C. 2151.414(B)(1)(a); best interest; preponderance; R.C. 2151.414(D)(1); R.C. 2151.414(E); R.C. 2151.414(D)(2); clear and convincing; manifest weight; reasonable-efforts finding; due process; fundamental right; parent; ultimate welfare.*

Affirmed the juvenile court's judgment granting permanent custody of the minor child to the agency and terminating all parental rights. The juvenile court engaged in the proper analysis and made the requisite determinations under R.C. 2151.414(B)(1), (D)(1) and (E). The juvenile court's judgment was not against the manifest weight of the evidence, its reasonable-efforts finding was not erroneous, and father's fundamental right to parent his child was not violated.