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Court of Appeals, Eighth Appellate District

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March 27, 2025

113863 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ADAM KOHN, ET AL. v GLENMEDE TRUST COMPANY, N.A., ET AL.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Motion for reconsideration; Civ.R. 6; response time; due process; judgment on the pleadings; saving statute; statute of limitations; double-dismissal rule.*

Trial court did not violate plaintiff's due-process rights even though it ruled on motion for reconsideration before plaintiff's response deadline had passed because plaintiff filed a brief in opposition to the motion for judgment on the pleadings that was the subject of the reconsideration.

Trial court erred in finding that plaintiff's third complaint was barred by Ohio's saving statute and the applicable statutes of limitations where first refiled complaint was dismissed by the trial court without prejudice pursuant to Civ.R. 41(A)(2), and Civ.R. 41(A)(2) does not include a double-dismissal rule.

Late production of plaintiff's expert reports did not warrant dismissal where court did not grant defendants' motion to strike the reports.

113879 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENNETH BROWN

Dismissed and remanded.

William A. Klatt, J.,* Kathleen Ann Keough, P.J., and Deena R. Calabrese, J., concur.

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

KEY WORDS: *Anders brief; lack of meritorious grounds for appeal; wholly frivolous; motion to withdraw; dismiss the appeal; plea made knowingly, intelligently, and voluntarily; Crim.R. 11(C)(2); remand; nunc pro tunc; clerical error.*

Motion to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), granted where there are no meritorious grounds for appeal. Case remanded for the trial court to issue nunc pro tunc judgment entries that reflect the offenses to which the defendant-appellant pleaded guilty and the sentences imposed.

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113926	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
NAIMAN RICHMOND PROPERTIES, LTD., ET AL. v CLEVELAND ELECTRIC ILLUMINATING COMPANY			

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: *Summary judgment; de novo review; trespass; prescriptive easement; nuisance; affidavit; personal knowledge.*

Judgment affirmed. Because appellate review of a trial court decision on a motion for summary judgment is de novo, a reviewing court may affirm a trial court's decision for a different reason. We affirm the trial court's judgment granting the appellee's motion for summary judgment on a ground different than the trial court. While the trial court found that the appellee had an express easement for one of the subject poles at issue and a prescriptive easement for the other two poles at issue, our de novo reveals that all three poles were subject to a prescriptive easement. Because the poles were subject to a prescriptive easement, appellants failed to demonstrate a trespass cause of action against appellee. We further find that the poles did not constitute a nuisance. The trial court properly disregarded portions of an affidavit as not being based on personal knowledge and containing conclusory averments.

114044	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v DAVID JOHNSTON			

Reversed and remanded.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Housing court; community control; violations of community control; sanctions; interior inspection; reasonably related; overbroad.*

Judgment reversed. The trial court's order requiring defendant to permit interior inspections of his two properties as a violation of his community control was not reasonably related to the goals of community control and overbroad and, therefore, impermissible.

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114151 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
M.J.S. v C.S.S.

Reversed.

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: *Civil contempt; clear and convincing evidence; prima facie case; valid court order; knowledge of the order; violation of the order; abuse of discretion; agreed judgment entry; shared-parenting plan; intent of parties; order is subject to more than one reasonable interpretation; ambiguous.*

The trial court abused its discretion in finding Father in contempt for home-schooling the children because the language in the agreed judgment entry was ambiguous, and thus, there was not clear and convincing evidence that he had violated the court's order.

114180 EAST CLEVELAND MUNI. C Criminal Muni. & City
CITY OF EAST CLEVELAND v CHRISTOPHER KLINE

Reversed and remanded.

Sean C. Gallagher, J., Michael John Ryan, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *OVI; under the influence; Traf.R. 10; Traf.R. 10(D); Traf.R. 10(B); Traf.R. 1(B); Traf.R. 2(D); Crim.R. 11; Crim.R. 1(C)(3); traffic case; ordinance; misdemeanor; petty offense; plea; effect; no contest; accepted; never entered; conviction; nullity.*

Reversed appellant's conviction for operating a vehicle while under the influence, which was a petty misdemeanor traffic offense. Because the case involved the violation of a traffic ordinance, Traf.R. 10 applied, rather than Crim.R. 11. Appellant challenged whether the trial court complied with Traf.R. 10(B) and (D). Regardless of any deficiencies in informing appellant of the effect of the plea of no contest, the record showed that appellant never actually entered a plea of no contest, which was conceded by the city. Therefore, appellant's conviction was a nullity.

114225 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES SHIRLEY

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Affirmed.

Deena R. Calabrese, J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Sufficiency of the evidence; manifest weight; drug possession; R.C. 2925.11(A).*

Judgment affirmed. *Appellant's conviction for possession of drugs was supported by sufficient evidence and was not against the manifest weight of the evidence. Appellant argued that he did not possess the pill bottle that was later found to contain methamphetamines. Both police officers' testimonies and video evidence showed that appellant had something in his hand that resembled the pill bottle, and later, as he was being apprehended by police, he crouched down near the spot where the pill bottle was found.*

114308	GARFIELD HTS. MUNI.	C	Criminal Muni. & City
CITY OF GARFIELD HEIGHTS v CHRISTOPHER POREE			

Affirmed.

Michael John Ryan, P.J., Sean C. Gallagher, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Manifest weight of the evidence.*

Judgment affirmed. *Appellant's theft conviction was not against the manifest weight of the evidence. The trial court was in the best position to judge the witnesses' credibility, and this is not the exceptional case in which the evidence weighed heavily against the conviction.*

114349	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v AZJAUN TODD			

Affirmed.

Deena R. Calabrese, J., Kathleen Ann Keough, 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: *Sentencing hearing; victim-impact statement; Marsy's Law; rights of crime victims; Ohio Const., art. I, § 10a; R.C. 2929.19(A); trial court discretion; nonvictim statements at sentencing hearing; victim's representative; R.C. 2930.02(A)(1); R.C. 2930.02(D).*

Trial court did not err by allowing the victim's mother to speak at the defendant's sentencing hearing, even though she was not a designated victim representative under Marsy's Law. Ohio law

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grants trial courts discretion to allow others besides victims to speak at sentencing hearings with the court's approval. Marsy's Law expanded the rights of crime victims but did not limit the trial court's preexisting discretion under R.C. 2929.19(A) to hear from other individuals. In addition, nothing in the record indicated the defendant was prejudiced by the trial court permitting the victim's mother to speak. When the trial court proceeded to sentencing, it focused on the statutory factors relevant to sentencing and did not mention the statements of the victim's mother.