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Court of Appeals, Eighth Appellate District

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August 12, 2021

109146	EAST CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF EAST CLEVELAND v TIMIKA THOMAS			

Reversed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Sufficiency of evidence; plain error; E.C. Ord. 331.08; driving in marked lanes or continuous lines of traffic; R.C. 4511.33; statutory interpretation.*

Because the city failed to demonstrate that appellant's conduct violated E.C. Ord. 331.08, appellant's conviction was not supported by sufficient evidence.

109540	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
S.L. & M.B., LLC, ET AL. v UNITED AGENCIES, INC., ET AL.			

Affirmed.

Michelle J. Sheehan, J., Mary J. Boyle, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Insurance policy; breach of legal duties; tortious interference with contractual relationship; fraud and misrepresentation.*

The trial court's grant of summary judgment to an insurance agent and agency was proper on claims of 1) breach of legal duties, 2) tortious interference with contractual relationship, and 3) fraud and misrepresentation against insurance agency and agent. In general, an insurance agent owes no duty to third parties. An insurance agent and agency who procured an insurance policy for a client who did not request that a mortgagee be named as an additional insured had no legal duty to the mortgagee where there was no evidence of a relationship or communication between the mortgagee and the insurance agent or agency and where the insurance policy did not expressly bestow rights to the mortgagee or lien holder.

109563	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DANIEL HUGHES			

Affirmed.

Michelle J. Sheehan, J., Frank D. Celebrezze, Jr., P.J., and Emanuella D. Groves, J., concur.

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KEY WORDS: *Involuntary manslaughter; aggravated robbery; sufficiency and manifest weight of evidence; invited error; jury instruction on flight; consecutive sentencing.*

The convictions for involuntary manslaughter and aggravated robbery were based on sufficient evidence and are not against the manifest weight of the evidence where the codefendant's testimony was corroborated by other witnesses and evidence. The trial court did not abuse its discretion by instructing the jury on flight of a defendant where the evidence showed the defendant left the scene and engaged in subterfuge to find haven. A party cannot claim error in the introduction of hearsay testimony he solicited. The record supported the imposition of consecutive sentences where defendant's criminal history and actions in planning a robbery with others resulted in the victim's death.

109879	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DESHAWN D. TYE			

Dismissed.

Lisa B. Forbes, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Appellate jurisdiction; final appealable order; R.C. 2502.02; Crim.R. 32; sentencing; disposition of all counts.*

Because appellant was not sentenced on all of the charges for which he was convicted, the sentencing entry is not a final appealable order. This court therefore lacks jurisdiction, and the appeal must be dismissed.

109923	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL DAVIS			

Dismissed.

Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur; Sean C. Gallagher, P.J., concurs in judgment only with separate opinion.

KEY WORDS: *Anders brief; motion to withdraw as counsel; meritorious grounds for appeal; wholly frivolous; Crim.R. 11; knowing, intelligent, and voluntary guilty plea.*

Counsel's motion to withdraw granted and appeal dismissed. Upon independent review of the record, no arguably meritorious issues were found to exist.

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109971	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LUIS RODRIGUEZ			

Affirmed.

Lisa B. Forbes, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Felony sentencing; maximum sentences; consecutive sentences.*

Defendant's 11-year prison sentence is affirmed. The maximum portion of the sentence is not contrary to law and the consecutive sentences are supported by clear and convincing evidence in the record.

109974	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
LAKEESHA MATHEWS, ET AL. v JERRY JOSEPH COOPER, ET AL.			

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Forcible entry and detainer; restitution order; eviction; writ of execution; damage to personal belongings; trespass to chattels; gratuitous bailment; conversion; summary judgment; unpaid rent; manifest weight of the evidence; R.C. 1923.03; damages related to eviction.*

Trial court did not err in granting summary judgment in favor of appellees on appellants' claims for trespass to chattels, conversion or breach of bailment duties. There was no evidence that appellees intentionally dispossessed appellants of their personal belongings, wrongfully controlled, possessed or exercised dominion over appellants' personal property or intended to possess custody of any of appellants' personal belongings. Appellees acted pursuant to a court order and in accordance with the bailiff's instructions in hiring movers to remove appellants' personal belongings from the premises and transport them to a storage unit.

Trial court's award of \$6,000 in unpaid rent to appellees on their counterclaim was not against the manifest weight of the evidence. Trial court did not err in failing to award appellees moving expenses, storage expenses and attorney fees related to the eviction action. Appellees were not entitled to recover, on their counterclaim, damages related to the eviction action that they could have recovered by pursuing their pending second cause for damages in the eviction action.

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109986 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
180 DEGREE SOLUTIONS, LLC v METRON NUTRACEUTICALS, LLC, ET AL.

Reversed in part and remanded.

Mary J. Boyle, A.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Breach of contract; distribution agreement; damages; judgment notwithstanding the verdict; Civ.R. 50(B)(1); motions to compel discovery; exclusion of expert, motions in limine.*

The trial court erred when it denied 180 Degree Solutions' motion for judgment notwithstanding the verdict. Metron Nutraceuticals failed to present evidence of damages resulting from 180's breaches of the distribution agreement, and Metron therefore did not establish its claim for breach of contract. Although we find that the trial court erred in admitting testimony of a criminal conviction, the trial court did not abuse its discretion in the other challenged pretrial and trial rulings. We find no cumulative error that warrants a new trial on 180's claims.

110021 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE E.E., ET AL.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Neglect, dependency, abuse; temporary custody, R.C. 2151.28(L), Evid.R. 803(6), Evid.R. 803(8); jurisdiction.*

Juvenile court did not err in finding child was abused and neglected since there was competent and credible evidence in the record to support the court's findings. However, case remanded as to sibling, where the juvenile court failed to comply with R.C. 2151.28(L) as to its findings of dependency. Juvenile court did not err in allowing testimony of social worker as to actions that predated her assignment of the case since her testimony was permissible under Evid.R. 803(8). Complaint that pleaded neglect was sufficient to acquire jurisdiction of child, even though court ultimately amended complaint to reflect dependency. The juvenile court's decision to award temporary custody to CCDCFS was supported by a preponderance of the evidence.

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110037 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DARIUS CLARK

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *R.C. 2953.21/postconviction relief; ineffective assistance of counsel; new evidence; evidentiary hearing.*

Appellant's trial counsel's decision to not use witness testimony regarding appellant's good behavior can be considered trial strategy where using the witness testimony would have allowed appellee to raise appellant's prior convictions. Further, none of the facts in the witness affidavits related incidents to around the time of the victim's injuries or explained how the victim sustained the burn injuries. Appellant has failed to provide any new substantive evidence to establish any constitutional error. Additionally, appellant failed to file appellant's motion to amend the postconviction-relief petition within the required time frame to do so. Appellant's counsel's performance was not deficient, and the trial court did not violate appellant's due process rights by not holding an evidentiary hearing; there was no error where the trial court dismissed appellant's postconviction-relief petition.

110148 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RUSSELL J. PHILLIPS

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Sentence; R.C. 2929.11; R.C. 2929.12; factors.*

Defendant's sentence was supported by the record and not contrary to law because the record reflects that the trial court considered all relevant factors.

110161 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v MAURICE WATSON

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Postconviction relief; untimely; delayed appeal; findings of fact and conclusions of law.*

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Filing a delayed appeal does not toll the 365-day time limit for filing a petition for postconviction relief. R.C. 2953.21(A)(2)(a) has been interpreted to mean that if a defendant does not file a timely direct appeal, then that defendant has 365 days from the expiration of the time they had to file a direct appeal to file a petition for postconviction relief. Here, appellant did not file a timely direct appeal and his petition was filed more than 365 days after the time he had to file a direct appeal. As such his petition was untimely. Trial courts are not required to issue findings of fact and conclusions of law in denying untimely petitions for postconviction relief. Therefore, the trial court did not err in denying appellant's untimely petition without making findings of fact and conclusions of law.

110333	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE F.M., ET AL.			

Affirmed.

Eileen A. Gallagher, P.J.; Mary Eileen Kilbane, J., and Lisa B. Forbes, J., both concur in judgment only.

KEY WORDS: *R.C. 2151.414(D); best interests of the child; abuse of discretion; ineffective assistance of counsel.*

Appellant did not show that the juvenile court abused its discretion in determining that the best interests of the children supported awarding permanent custody to the Cuyahoga County Division of Children and Family Services. Nor did appellant show ineffective assistance of counsel with respect to the cross-examination of social workers below.

110335	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE R.G.			

Affirmed.

Lisa B. Forbes, J., Sean C. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Termination of parental rights, permanent custody, best interest of the child, therapeutic foster care, basic needs, special needs, clear and convincing evidence, abuse of discretion.*

The juvenile court did not abuse its discretion when determining that permanent custody to the agency was in the best interest of the child, and the court's findings are supported by clear and convincing evidence in the record. The child is medically fragile and has been in the care of the same therapeutic foster family for over three years, since his release from the NICU nine months after

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(Case 110335 continued)

he was born. Mother does not understand the child's special needs and fails to engage in services and with the child. Mother had parental rights involuntarily terminated with respect to another child. Mother has no income and cannot provide for the child's basic or special needs.

110336 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE S.D.

Affirmed.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Permanent custody; best interest; R.C. 2151.414(D); R.C. 2151.414(E); R.C. 2151.353; manifest weight; abuse of discretion.

The juvenile court's decision to grant permanent custody of her child to the Cuyahoga County Division of Children and Family Services was not against the weight of the evidence or an abuse of discretion. The court's judgment was based on competent, credible evidence heard at the permanent custody hearing.

110395 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.H.

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Motion for extraordinary fees; appointed counsel fees; abuse of discretion.

The juvenile court did not abuse its discretion in denying appellant's motion for extraordinary fees. The juvenile court was in the best position to determine whether appellant's request for extraordinary fees was reasonable, and whether extraordinary fees were warranted.