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Court of Appeals, Eighth Appellate District

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August 13, 2020

108547 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RICHARD G. JOHNSON v U.S. TITLE AGENCY, INC.

Affirmed.

Mary J. Boyle, P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Title insurance, mechanic's liens, breach of contract, negligence, bad faith, law of the case, directed verdict, bifurcation, motion for new trial, exclusion of evidence, management of trial proceedings, trial court bias*

Any mistake the trial court made in failing to follow the law of the case that Johnson was a third-party beneficiary to the closing instructions was harmless error. The trial court did not err in granting a directed verdict on Johnson's negligence claim because Johnson did not present sufficient evidence that the title insurer's failure to procure the proper insurance caused his damages. The trial court did not abuse its discretion in bifurcating Johnson's bad-faith claim from the trial on the rest of his claims. There was no cumulation of errors that deprived Johnson of a fair trial. The trial court did not err in excluding portions of video testimony. The trial court did not display such bias against Johnson so as to make fair judgment impossible.

108548 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v AMIR ABDI AHMED

Reversed and remanded.

Anita Laster Mays, J., Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Ineffective assistance of counsel; immigration; pleading guilty.*

As the trial court's advisement on the immigration consequences of pleading guilty did not necessarily foreclose the possibility of finding prejudice, we cannot conclude that the court's properly giving the advisement alone is a valid reason for denying a hearing on the motion when the appellant presented prima facie evidence of ineffective assistance of counsel.

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108623	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
BANK OF NEW YORK MELLON v NADIA ZAYED, ET AL.			

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Foreclosure; summary judgment; Civ.R. 56; standing; mortgage; promissory note; assignment; holder; R.C. 1303.25.*

The trial court did not err in granting summary judgment in favor of appellee in the foreclosure action. Appellee, as holder of the note and mortgage, demonstrated that it was entitled to enforce the note by commencing foreclosure proceedings. Appellants failed to demonstrate the existence of a genuine issue of material fact that precluded summary judgment.

108671	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JOHN BRAGG			

Judgment reversed and sentence modified.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *“Motion to Correct a Facially Illegal Sentence”; void sentence; remedy.*

The trial court’s judgment denying appellant Bragg’s Motion to Correct an Illegal Sentence is reversed, and the case is remanded with instructions for the trial court to issue a sentencing entry reflecting Bragg’s sentence as modified.

108711	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE S.G., ET AL.			

Dismissed.

Eileen A. Gallagher, J., and Larry A. Jones, Sr., J., concur; Mary J. Boyle, P.J., dissents with separate opinion.

KEY WORDS: *Anders brief; motion to withdraw as counsel; meritorious grounds for appeal; wholly frivolous; legal custody; best interest of child.*

Counsel’s motion to withdraw granted and appeal dismissed. Upon review of the record, no arguably meritorious issues were found to exist. Juvenile court did not abuse its discretion in concluding that award of legal custody was in the best interest of the children.

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108862 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE A.L.

Reversed and remanded.

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

KEY WORDS: *Motion to suppress; juvenile delinquency; police interrogation; voluntary confession; Miranda warning; R.C. 2151.352; right to have a parent or adult present.*

Trial court erred by denying juvenile's motion to suppress his confession. Juvenile's confession, which he made without the presence of an adult during a police interrogation, was not voluntary. Additionally, juvenile's Miranda rights were violated because his confession was coerced and he did not have the requisite level of comprehension to properly waive his rights.

108909 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
CHRISTEEN TUTTLE, ET AL. v TIM COLLINS, ET AL.

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Conflict of interest; breach of fiduciary duty; Civ.R. 12(C); business judgment rule; derive personal benefits; Civ.R. 15(A); amended complaint; Civ.R. 60(B).*

Plaintiffs-appellants' complaint was properly dismissed under Civ.R. 12(C) because the complaint failed to allege a set of facts that established a conflict of interest, breach of fiduciary duties, or a violation of the nonprofit organization's bylaws regarding voting. Plaintiffs-appellants' failure to file a Civ.R. 60(B)(5) motion precluded them from subsequently filing an amended complaint.

108993 GARFIELD HTS. MUNI. G CIVIL MUNI. & CITY
MICHAEL TENNANT, ET AL. v HUNTINGTON NATIONAL BANK

Reversed and remanded.

Sean C. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: *Small claims; complaint; Civ.R. 12(B)(6); Civ.R. 12(C); motion to dismiss; statute of limitations; Electronic Funds Transfer Act; 15 U.S.C. 1693m(g); time-barred; Civ.R. 53; objection; magistrate's decision; Civ.R. 53(D)(3)(b)(iv); Civ.R. 1(C)(4); Civ.R. 8(A); R.C. 1925.16; plain error; state-law claims.*

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The trial court committed plain error when it granted appellee's motion to dismiss and found that the action was time-barred. Small-claims actions are subject to the requirements of Civ.R. 53, and although appellants did not raise a specific objection to the magistrate's decision relating to state-law claims, they established plain error occurred. Accepting the factual allegations as true and making all reasonable inferences in favor of the plaintiff, the complaint can be read to include state-law claims, which are not subject to the one-year statute of limitations under the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. 1693m(g), which was applied by the trial court in dismissing the action.

109005	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAMES CALLIENS			

Affirmed.

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

KEY WORDS: *Menacing by stalking; R.C. 2903.211(A)(1); pattern of conduct; mental distress; sufficiency; manifest weight.*

Defendant's convictions for three counts of menacing by stalking affirmed. The manifest weight of the evidence demonstrated that defendant engaged in a pattern of conduct and knowingly caused the victim mental distress.

109031	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.W.			

Affirmed in part; modified in part; and remanded.

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

KEY WORDS: *Juvenile; delinquent; sufficiency; manifest weight; gross sexual imposition; sexual imposition; lesser-included offense; force; sexual contact; corroboration; juvenile offender registrant; tier; discretion; R.C. 2907.06; R.C. 2152.82(A).*

Appellant's adjudication as delinquent for committing gross sexual imposition by forcing the victim to touch his privates was based on sufficient evidence. Although there was insufficient evidence of force on the other two counts, there was sufficient evidence to support a finding that appellant committed the lesser-included offense of sexual imposition on those counts. Appellant's adjudication as delinquent was not against the manifest weight of the evidence. The trial court did not abuse its discretion in classifying appellant as a Tier II sex offender/child-victim-offender

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registrant. Case was remanded for redisposition.

109042	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v MARSHAUN WILSON			

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Crim.R. 48(B); Crim.R. 3; sufficiency of complaint; sua sponte dismissal; Cleveland Codified Ordinances 605.11; misconduct involving a public transportation system.*

The trial court's dismissal of the case against appellee was proper. The citation issued to appellee was deficient in that it did not set forth the essential element of evading the payment of the public transportation system fare.

109056	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
JANICE CASEY, INDIVIDUALLY v ERIE INSURANCE COMPANY, ET AL.			

Affirmed.

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

KEY WORDS: *Summary judgment; wrongful death; survivorship; insurance; vicarious liability; babysitter; joint tortfeasor; independent contractor; regular use.*

This case concerns the granting of two summary judgment motions in a wrongful death/survivorship action. The decedent in this case was a driving instructor who was struck and injured while seated in the passenger seat providing instruction to a student. The other driver was a babysitter driving children to their mother's office so that the babysitter could go to her job at a local grocery store.

The decedent's estate brought a claim against the family who had employed the babysitter, alleging that they were vicariously liable for her actions and that they were joint tortfeasors with the babysitter as well. The family motioned for summary judgment on the grounds that the babysitter was an independent contractor and that the decedent's estate was improperly alleging joint tortfeasor liability. We agreed and affirmed the granting of summary judgment.

The second motion for summary judgment was filed by State Farm, which had issued a personal automobile insurance policy to the decedent. The policy contained a regular use exception whereby the policy would not cover the decedent if the decedent regularly

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used the vehicle he was riding in at the time of the accident. The court granted summary judgment for State Farm and we agreed that the decedent had regular use of the vehicle.

109065 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STEVEN SINLEY v SAFETY CONTROLS TECHNOLOGY, INC., ET AL.

Affirmed.

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

KEY WORDS: Collective bargaining agreement; arbitration; employer intentional tort; R.C. 2745.01; clear and unmistakable waiver; right to judicial forum; motion to stay proceedings and compel arbitration.

Trial court did not err in denying defendant-employer's motion to stay proceedings and compel arbitration because the collective bargaining agreement that covered plaintiff-employee did not contain a clear and unmistakable waiver of the employee's right to a judicial forum for his employer intentional tort claim in violation of R.C. 2745.01.

109074 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DOMINGO GARY

Affirmed.

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

KEY WORDS: Crim.R. 11(C)(2)(a); mandatory; community control; substantial compliance.

Because the record reflected that the defendant was subjectively aware that prison was mandatory and he was ineligible for community control, the trial court substantially complied with Crim.R. 11(C)(2)(a), even though it did not specifically advise the defendant before accepting his plea that prison was mandatory and he was ineligible for community control.

109597 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LERON COLEMAN

Vacated and remanded.

Mary Eileen Kilbane, J., Eileen T. Gallagher, A.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Conceded error; Crim.R. 11; strict compliance; right to cross-examine accusers; right to compulsory process.

Defendant-appellant sought to have his sentence vacated on the grounds that the trial court did not strictly comply with Crim.R. 11 before accepting his guilty plea. The state conceded the error and agreed that his sentence should be vacated. Upon review, the trial court did not advise defendant-appellant of his constitutional right to confront and cross-examine his accusers or his constitutional right to compulsory process. Accordingly, the sentence is vacated and the matter remanded.