

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 25, 2020

108169 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
WENDY JACOBSON, ET AL. v BEVERLY RESNICK, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Summary judgment; de novo standard of review; inter vivos gift; check; R.C. 1303.45; intent of donor; supporting affidavits; Civ.R. 56(F) extension of time; abuse of discretion.*

Appellant failed to demonstrate that the trial court erred in determining that no genuine issues of material fact existed with regard to any of the claims in this matter and that summary judgment was appropriate. Further, the trial court did not abuse its discretion in denying appellant's motion for extension of time under Civ.R. 56(F).

108478 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
MUSIAL OFFICES, LTD. v COUNTY OF CUYAHOGA

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, A.J., Patricia Ann Blackmon, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Law of the case; recovery of illegally collected taxes; unjust enrichment; county; immunity; prejudgment interest; class action; class decertification; common fund; equal protection.*

Finding that the trial court had jurisdiction over claims to recover overpayment of taxes was law of the case.

Plaintiffs could not recover on unjust enrichment claim against the county even though the county unjustly retained moneys belonging to plaintiffs where the county no longer had possession of the funds.

Trial court properly denied motion to decertify class action where all requirements for class certification were maintained and no individual calculations of damages were required because the parties stipulated to each class member's damages amount.

Trial court properly ordered the county to pay the judgment on behalf of all plaintiffs' class to plaintiffs' counsel where court retained jurisdiction to ensure that all class members, including absent members, are remunerated.

Trial court properly denied plaintiffs' equal protection claim where distinction between class members and other property owners

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occurred because members of the plaintiffs' class challenged their property values for taxation purposes and other property owners within the county did not.

Trial court erred in dismissing plaintiffs' claim for illegally collected taxes where evidence showed that the county collected taxes in excess of the amounts authorized by law.

109028 BOARD OF TAX APPEALS E CIVIL C.P.-NOT JUV,DOM OR PRO
CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION v
CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: R.C. 5717.04, appeal of Ohio Board of Tax Appeals decision, transfer of limited liability company membership, arms-length sale of real property.

The Board of Tax Appeals decision to uphold the county's original tax valuation of the property in issue and reject appellant's proposed increase based on the asserted sale price was not unlawful or unreasonable. Appellant failed to provide credible evidence to substantiate that the transfer of the limited liability company membership interests was merely an arms-length sale of real property only entitled to valuation at the alleged sale price.

109070 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICKY WILEY

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: Technical violation; R.C. 2929.15(B)(1); community control sanctions violation; consecutive sentences; R.C. 2929.14(C)(4).

The trial court was not limited to sentencing the defendant to 90 days under R.C. 2929.15(B)(1)(c)(i) for violating the terms of his community control sanctions because his violation was more than just a technical violation. However, the record did not support the trial court's imposition of consecutive sentences. Therefore, the consecutive portion of defendant's sentence was vacated.

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109169 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CORTEZ YOUNG

Affirmed.

Anita Laster Mays, J., and Mary Eileen Kilbane, J., concur; Sean C. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Murder, attempted murder, felonious assault, discharge of firearms, firearm specifications, R.C. 2901.05, self-defense, sufficiency of the evidence, manifest weight of the evidence, Evid.R. 404(B), prior bad acts, Evid.R. 401 relevance, Evid.R. 403, unfair prejudice, Crim.R. 33, mistrial, late disclosures of evidence, cumulative errors, R.C. 2953.08, felony sentencing, R.C. 2929.11, R.C. 2929.12, felony and consecutive sentences.*

The trial court's judgment is affirmed. Appellant's claim of self-defense is an affirmative defense that may not be reviewed for sufficiency because it does not consider the strength of defense evidence but a manifest weight inquiry is proper.

The prior bad acts evidence was properly admitted under Evid.R. 404(B) to demonstrate appellant's motive and intent pursuant to State v. Hartman, Slip Opinion No. 2020-Ohio-4440. The prior bad acts were not too remote in time and were closely related in nature, time, and place to the offenses charged. Appellant placed the issue of intent in question by asserting self-defense.

Appellant failed to demonstrate entitlement to a new trial under Crim.R. 33 due to prejudice or compromise of his defense by the unintentional delayed disclosure of certain evidence, the majority of which was excluded at trial.

Appellant's arguments did not constitute error rendering the claim of cumulative error moot.

The trial court made the requisite sentencing findings on the record and in its journal entry, and the sentences were in the statutory range.

109171 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JACQUE RENODE

Affirmed.

Patricia Ann Blackmon, P.J.; Michelle J. Sheehan, J., concurs; Frank D. Celebrezze, Jr., J., concurs with attached separate opinion.

KEY WORDS: *Murder; felonious assault; aggravated menacing; intimidation of a witness; Confrontation Clause; excited utterance; mistrial; sufficiency; manifest weight of the evidence.*

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The trial court did not violate the Confrontation Clause in admitting deceased witness's statements during 911 call because they were nontestimonial and constituted excited utterances; trial court did not err in denying motion for mistrial challenging veracity of declaration and witness who testified to it; convictions were supported by sufficient evidence and were not against the manifest weight of the evidence.

109214 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHNNY RANSOME MILLER, JR.

Affirmed.

Frank D. Celebrezze, Jr., J., Patricia Ann Blackmon, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Crim.R. 29; sufficiency of the evidence; manifest weight of the evidence; aggravated robbery; aggravated burglary; complicity; credibility of witness; allied offenses of similar import.*

Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. In addition, the trial court did not err in declining to merge Counts 1 and 2 because aggravated burglary and aggravated robbery are not allied offenses of similar import.

109275 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
THOMAS D. YECKLEY v THOMAS D. YECKLEY, ET AL.

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Foreclosure; Civ.R. 54/final, appealable order; magistrate's decision; Civ.R. 53(D)(3)(b)(i)/objections to magistrate's decision; motion for reconsideration; findings of fact and conclusions of law; plain error; abuse of discretion.*

The trial court's orders disposed of appellant's motions for accounting and rents, and the trial court's journal entry stated, in accordance with Civ.R. 54, that there was no just reason for delay resulting in a final, appealable order.

Appellant failed to timely file his objections to the magistrate's decision. Absent an argument of plain error, which appellant has not presented to this court, appellant's argument that the trial court erred in denying his motion for accounting and rents is not properly before this court.

Where the magistrate ruled on a motion and issued findings of fact and conclusions of law and appellant failed to file timely objections

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to the magistrate's decision, a second filing of an identical motion will not cure appellant's failure. The trial court did not err when it denied appellant's motion for reconsideration and appellant's motion for findings of fact and conclusions of law on appellant's identical second motion for accounting and rents.

There was no abuse of discretion where the trial court overruled appellant's objections to the magistrate's decision on the granting of appellee's summary judgment motion for foreclosure. Although appellant's objections to the magistrate's decision were timely filed, appellant failed to advance any new arguments other than those already presented and overruled. Additionally, appellant did not contest the foreclosure.

109381 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE O.M.

Reversed and remanded.

Patricia Ann Blackmon, P.J., Larry A. Jones, Sr., J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Serious youthful offender; blended sentence; juvenile court; invocation of adult sentence; R.C. 2152.14; likelihood of rehabilitation; clear and convincing evidence; public policy; juveniles less culpable.*

There was not clear and convincing evidence in the record that the juvenile was unlikely to be rehabilitated during the remainder of his juvenile delinquency commitment. Therefore, the invocation of his adult prison sentence was premature and is reversed.

109564 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE I.L.J.

Affirmed in part, reversed in part, and remanded.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion to show cause; attorney fees; abuse of discretion; contempt; R.C. 2705.05; purge conditions; child support; medical support order; R.C. 3109.05.*

The juvenile court did not abuse its discretion in finding father in contempt for failure to comply with the cash medical support order. However, it was impossible for father to comply with the purge conditions ordered in the juvenile court's judgment entry because the deadline to comply was prior to the journalization of the court's order. The juvenile court did not abuse its discretion in awarding attorney fees; the court properly considered the evidence, assessed the reasonableness of the attorney fees, and determined that the fees were associated with father's act of contempt.