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Court of Appeals, Eighth Appellate District

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October 24, 2019

107161 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SIMBO PROPERTIES, INC. v M8 REALTY, LLC

Affirmed.

Raymond C. Headen, J., Frank D. Celebrezze, Jr., P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Commercial real estate lease agreement; directed verdict; causation; breach of contract; expert testimony; jury instruction; alternative pleading; erroneous jury instruction; Civ.R. 8; prejudgment interest; R.C. 1343.03; accrual date; due and payable; prevailing party; American rule; fee-shifting clause; “main issue” standard; “some relief” standard; award of attorney fees and expenses; judicial estoppel; fixed-fee agreement.*

Judgment affirmed. Directed verdict was correctly granted where plaintiff-landlord failed to introduce evidence showing causation of alleged property damages. A jury instruction on alternative pleadings was a correct statement of law and did not mislead the jury so as to prejudice the complaining party’s substantial rights. Where the jury awarded landlord damages for a flag pole and real estate taxes, landlord sought prejudgment interest or late charge on those awards. Landlord was not entitled to an award of prejudgment interest or late charges for the flag pole because the matter was not raised at the lower court and, therefore, was waived on appeal. Regarding the real estate taxes, the trial court did not err when it found prejudgment interest and late charges could not be assessed where the underlying obligation was not due and payable prior to the court’s judgment. The “main issue” doctrine is applied to define the prevailing party where consenting, sophisticated parties, represented by counsel, knowingly and willingly negotiated a commercial lease agreement. As the prevailing party, tenant was entitled to receive all reasonable attorney fees and costs where the lease agreement allowed for this award. Where the prevailing party introduced evidence supporting the reasonableness and payment of its attorney fees and expenses, that party was not required to show that it had made the actual payment of the attorney fees and expenses before receiving an award for those amounts.

107276 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARLIN POWELL

Affirmed.

Eileen T. Gallagher, P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Hearsay; confrontation clause; forensic; report; serology; invited error; results; chain of custody; testimonial; business record; qualified witness; prosecutorial misconduct; voir*

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(Case 107276 continued)

dire; opening statements; good faith; ineffective assistance of counsel; prejudice; server; joinder; preindictment delay; actual prejudice; speculation; simple and direct.

Testimony provided by a former serology analyst did not violate the Confrontation Clause or the rules against hearsay evidence. The state's brief references to a victim who did not appear for trial did not amount to prosecutorial misconduct. Defense counsel did not render ineffective assistance of counsel by failing to file a motion to sever or by failing to renew a motion to dismiss for preindictment delay.

107711	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
KATHY PARKER, ET AL. v ROBERT SMITH, III			

Affirmed.

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

KEY WORDS: Contract; consideration; void; public policy; coercion.

Parties' settlement agreement was an enforceable contract even after court struck one of its provisions because there remained adequate consideration. There was no evidence of coercion to justify avoiding the contract.

107836	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ALLEN MURPHY			

Affirmed.

Anita Laster Mays, J., and Mary J. Boyle, P.J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: Rape; R.C. 2907.02(A)(1)(b); kidnapping; R.C. 2905.01(A)(4); sexual motivation specification; R.C. 2941.147; disseminating matter harmful to juveniles; R.C. 2907.31(A)(1); sufficiency and manifest weight of the evidence; Evid.R. 607(A); witness impeachment; Evid.R. 702; expert testimony; Evid.R. 704; opinion on ultimate issue; Evid.R. 401; relevant evidence; Evid.R. 402; relevant and irrelevant evidence; Evid.R. 403(A); danger of unfair prejudice; Crim.R. 52; harmless error; plain error; ineffective assistance of counsel; R.C. 2907.02(D); rape shield statute; R.C. 2907.02(E); admissibility hearing.

Appellant's convictions for rape, kidnapping, and disseminating matter harmful to a juvenile were legally sufficient and were not against the manifest weight of the evidence. The child victim provided detailed and consistent accounts of the activities and a victim's testimony alone is sufficient for a conviction.

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A medical sexual abuse expert may provide testimony that supports the facts presented by the child victim to assist the factfinder's determination of truthfulness. The expert's opinion that sexual abuse may have occurred in spite of the lack of genital trauma was fully explained, did not constitute testimony regarding the victim's veracity, and was admissible under Evid.R. 104, 702, and 704.

A social worker's testimony regarding the agency's categorization of a sexual abuse case as "substantiated" does not constitute testimony regarding the truthfulness or credibility of the alleged victim, particularly where no opinion is offered on the identity of the alleged perpetrator.

It was wholly within the trial court's discretion to exclude evidence that is deemed irrelevant under Evid.R. 401, 402, and 403. The exclusion of the evidence did not affect the appellant's substantial rights that would require reversal. Also, the jury heard the information during appellant's video police interview.

Evid.R. 607(A) that allows the credibility of a witness to be attacked by the party calling the witness does not apply because it is impossible to impeach an individual who did not testify as a witness.

Appellant failed to demonstrate that counsel was ineffective and to overcome the presumption that defense counsel's actions could be considered sound trial strategy. Cumulative error does not exist where the appellate court finds no errors.

Appellant waived his statutory right to request a hearing pursuant to R.C. 2907.02(E) to allow the trial court to address the admissibility of alleged evidence of prior abuse and determine whether the rape shield statute, R.C. 2907.02(D), as applied infringes the constitutional right to confrontation.

107889	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
WOODS COVE III, LLC v LESLIE BRAZIL, JR., ET AL.			

Affirmed.

Larry A. Jones, Sr., P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Civ.R. 56/summary judgment; motion to dismiss.*

The trial court did not err in granting appellee's motion for summary judgment. Appellants failed to provide any evidence sufficient to refute appellee's averments.

There was no error where the trial court granted appellee's motion to dismiss. Appellants' attempt to maintain identical claims in two separate lawsuits is prohibited.

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107905 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSHUA SZAFRANSKI

Affirmed in part, vacated in part; remanded for resentencing.

Eileen T. Gallagher, J., and Patricia Ann Blackmon, J., concur; Mary Eileen Kilbane, A.J., dissents with separate opinion.

KEY WORDS: *Sufficiency; manifest weight; voir dire; cumulative error; harmless error; motion in limine; road rage; community control.*

Defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence where victim's testimony was corroborated by the play-by-play account of the road-rage incident she reported to a 911 dispatcher. Voir dire was fair even though trial court prohibited defendant from specifically asking jurors if they had ever been involved in a road-rage incident because court allowed defendant to extensively question jurors about their personal experiences including whether they had been victims of any kind of crime. Sentence was contrary to law where court failed to specify the length of community-control sanctions and duration of GPS monitoring in the defendant's presence in open court and on the record.

107959 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MAYFRAN INTERNATIONAL INCORPORATED v ECO-MODITY, LLC

Reversed and remanded.

Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur; Mary Eileen Kilbane, A.J., dissents (with separate opinion attached).

KEY WORDS: *Long-arm statute; personal jurisdiction; minimum contacts.*

Appellant Ohio company established a prima facie showing that Ohio's long-arm statute confers upon the trial court personal jurisdiction over appellee California company and the trial court's exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

108023 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v IVO L. BIDINOST

Affirmed.

Patricia Ann Blackmon, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

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(Case 108023 continued)

KEY WORDS: Sexual predator; sexual offender classification hearing; R.C. 2950.09(B)(2); relevant information; factual findings; likelihood of recidivism.

Court's judgment classifying the defendant as a sexual predator is supported by competent credible evidence in the record.

108029	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DEANDRE TAYLOR			

Reversed and remanded.

Larry A. Jones, Sr., J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Blanket sentence; Crim.R. 32(C).*

Although the trial court's journal entry was compliant with Crim.R. 32(C), the journal entry cannot serve as a corrective measure for an invalid sentence. Where the trial court did not stipulate that appellant was being sentenced to a 12-month sentence on each count and that the sentences would run consecutive to each other, the result was a blanket sentence. A blanket sentence is not a valid sentence.

108053	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL I. GRAHAM			

Affirmed.

Raymond C. Headen, J., Eileen T. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion to dismiss; double jeopardy; high-speed chase across multiple counties; one single, continuous act; Blockburger "same elements" test; failure to comply; R.C. 2921.331(B); Crim.R. 48(B).*

The trial court properly granted defendant-appellee's motion to dismiss based upon double jeopardy. Defendant-appellee was previously convicted and sentenced on R.C. 2921.331(B) in Medina County. A subsequent indictment in Cuyahoga County on the same statute, for the same act, violated the defendant-appellee's double jeopardy rights. The trial court's failure to provide written findings of fact and reasons for dismissal was harmless error because the record identified the basis for the court's decision to grant defendant-appellee's motion to dismiss.

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108069 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL DOZIER, JR. v CREDIT ACCEPTANCE CORPORATION

Reversed and remanded.

Eileen T. Gallagher, J., and Michelle J. Sheehan, J., concur; Mary Eileen Kilbane, A.J., dissents with separate opinion.

KEY WORDS: *Arbitration; unconscionability; substantive unconscionability; procedural unconscionability.*

Trial court erred in finding that arbitration clause was unconscionable where plaintiff failed to present any evidence or argument that the agreement was substantively or procedurally unconscionable, and the agreement provided a right to reject arbitration in plain English.

108073 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEE JONES

108089 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEE JONES

Affirmed.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Motion to withdraw; plea; manifest injustice; postsentence; ineffective assistance of counsel; sentence; res judicata; record; dehors; undue delay; timeliness; affidavit; hearing.*

The trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty pleas, because the defendant failed to meet his burden of demonstrating the existence of a manifest injustice.

108296 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v KORDEYA D. WATTS

Affirmed.

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

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21; R.C. 2953.23; postrelease control; Crim.R. 32; sentencing package; allied offenses; R.C. 2941.25; res judicata; findings of fact and conclusions of law.*

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The trial court did not err or abuse its discretion in denying appellant's untimely petition for postconviction relief.

108320	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v EDWARD TAYLOR			

Affirmed and remanded.

Patricia Ann Blackmon, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Postrelease control; R.C. 2967.28(B)(1); R.C. 2929.191(C); nunc pro tunc; res judicata; guilty plea.*

Defendant's attempted murder conviction carried a mandatory term of five years of postrelease control, but where correct information was provided during sentencing hearing, error was subject to correction by a nunc pro tunc opinion under R.C. 2929.191(C); error did not void guilty plea, and this claim was without merit by operation of res judicata.