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Court of Appeals, Eighth Appellate District

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September 2, 2021

109727 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAYVON HILL

Affirmed.

Frank D. Celebrezze, Jr., P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Sufficiency of the evidence; Crim.R. 29; circumstantial evidence; App.R. 16(A); separate argument; App.R. 12(A)(2); manifest weight of the evidence.*

Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The court disregarded appellant's assertions regarding evidence of mens rea because he did not present any supporting argument or authority regarding this issue in violation of App.R. 16(A).

109783 BOARD OF TAX APPEALS H ADMIN APPEAL
COMMONWEALTH UPSCALE PROPERTIES, LLC v CUYAHOGA COUNTY BOARD OF REVISION

Affirmed.

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

KEY WORDS: *Notice of appeal; untimely; certified mail; board of revision; board of tax appeals; tax commissioner.*

Board of Tax appeals properly dismissed tax appeal as untimely.

109882 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
C.A.P. v M.D.P.

Affirmed.

Lisa B. Forbes, J., Frank D. Celebrezze, Jr., P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Domestic violence civil protection order; menacing by stalking; child abuse.*

Trial court's granting of a domestic violence civil protection order affirmed. Respondent's argument that there was no "threat of force" or "fear of imminent serious physical harm" is not well-taken, because the protection order was not issued based on these elements. Rather, sufficient credible evidence in the record showed that the respondent committed menacing by stalking

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regarding the petitioner and child abuse regarding the parties' minor child.

110092 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARK WISNIEWSKI

Affirmed.

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

KEY WORDS: *Involuntary manslaughter; corrupting another with drugs; drug trafficking; drug possession; sufficiency of the evidence; manifest weight of the evidence; jail-time credit.*

Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The state presented evidence that the appellant sold heroin to the victim the day before the victim died as a result of a heroin overdose. Appellant was not entitled to jail-time credit for time served prior to sentencing on an unrelated case from a different county.

110110 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEFFREY TOBIAS

Affirmed.

Anita Laster Mays, P.J., Larry A. Jones, Sr., J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Crim.R. 32(C); final appealable order; R.C. 2505.02; sentencing entry; void; voidable; res judicata.*

The trial court's judgment denying appellant's motion to provide a final, appealable sentencing order is affirmed. The sentencing entry contains the requisite information. The trial court had subject-matter jurisdiction over the case and personal jurisdiction over the defendant. Thus, the alleged sentencing error is voidable and the doctrine of res judicata applies to appellant's collateral attack.

110118 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BERNS CUSTOM HOMES, INC. v RICHARD G. JOHNSON

Reversed and remanded.

Eileen T. Gallagher, J., Frank D. Celebrezze, Jr., P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Charging order; receiver; res judicata; legal professional association; partnership; corporation; statutory construction.*

The trial court erred in granting a charging order and appointing a receiver to administer the charging order in the absence of any legal authority authorizing the court to issue such orders.

Res judicata is an affirmative defense and does not deprive the court of subject-matter jurisdiction.

110135 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ARLENE PINCUS v ROBERT DUBYAK, ET AL.

Reversed and remanded.

Mary J. Boyle, A.J., Anita Laster Mays, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Keywords: Civ.R. 12(C); judgment on pleadings; Civ.R. 15(A); amending pleadings; R.C. 2305.11(A); statute of limitations; R.C. 2305.19(A); savings statute; legal malpractice; attorney-client relationship; power of attorney.*

The trial court erred when it granted the defendants' motion for judgment on the pleadings on the plaintiff's claim for legal malpractice brought in her individual capacity. The trial court also abused its discretion in denying the plaintiff's motion to amend her complaints. The plaintiff's first and second amended complaints contained allegations to establish that an attorney-client relationship existed between her and the attorney, not just between the attorney and her husband pursuant to a power of attorney.

110152 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY T. BROWN

Affirmed.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Evid.R. 613; effective assistance of counsel; felonious assault; manifest weight.*

Evidence of defendant's prior stale conviction was admissible under Evid.R. 613, prior inconsistent conduct, when the defendant denied ever using a knife as a weapon. Defendant failed to demonstrate counsel was ineffective for failing to request an additional instruction on prior conviction; the record demonstrated that the trial court gave the jury two instructions. Defendant's conviction for felonious assault was not against the manifest

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weight of the evidence because the jury was able to assess the credibility of the witnesses and determine whose testimony to believe or discount.

110213 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
T. R.H. v A.D.H.

Affirmed in part and remanded.

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

KEY WORDS: Child support; contempt of court; doctrine of laches; motion to show cause; attorney fees.

The trial court did not abuse its discretion in determining that Husband violated the S.P.P. and was in contempt of court. The trial court did not abuse its discretion by finding that Wife's motion to show cause was not barred by the doctrine of laches, because the Husband did not demonstrate he was prejudiced. The trial court did not abuse its discretion by denying Husband's show cause motion because Wife and Husband exchanged income information before trial. The trial court did not abuse its discretion by ordering Husband to pay Wife's attorney fees, because Husband was found in contempt. The trial court did not abuse its discretion by modifying the child support order.

110243 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE T.W.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Stipulation of evidence; authentication; manifest weight of evidence; serious youth offender disposition.

The juvenile court did not err in admitting Instagram records in this case where the record reflects that T.W.'s trial counsel stipulated to those records. Further, the findings of guilt entered by the juvenile court were not against the manifest weight of the evidence where there was evidence that the juvenile participated in planning the robbery and further admitted to being in one of the stolen cars. The juvenile court did not err by imposing an SYO sentence simply because it had retained jurisdiction of cases by finding the juvenile to be amenable to the juvenile justice system.

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110252 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DAVID SHIE v OHIO ADULT PAROLE AUTHORITY

Affirmed.

Eileen A. Gallagher, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Complaint for a prohibitory injunction; Civ.R. 65; Ohio Adult Parole Authority; exercise of postrelease control; postrelease control notifications; R.C. 2967.28; void; voidable; res judicata.*

Trial court did not err in granting motion to dismiss plaintiff's complaint for a prohibitory injunction. Although the sentencing journal entry in plaintiff's criminal case did not include notice of the consequences of violating postrelease control, because any error in the imposition of postrelease control rendered that portion of the sentence voidable, not void, and plaintiff did not challenge the imposition of postrelease control in his direct appeal, the issue was barred by the doctrine of res judicata. Accordingly, five years of mandatory postrelease control was part of plaintiff's sentence, the Ohio Adult Parole Authority was authorized to place plaintiff on postrelease control upon his release from prison and plaintiff Shie was not entitled to a prohibitory injunction enjoining the APA from exercising postrelease control over him.

110350 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE F.M., ET AL.

Affirmed.

Mary Eileen Kilbane, J., Frank D. Celebrezze, Jr., P.J., and Eileen A. Gallagher, 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 children to the Cuyahoga County Division of Children and Family Services was not against the weight of the evidence. The court's judgment was based on competent credible evidence heard at the permanent custody hearing.

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110354 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RAYCO MANUFACTURING, INC. v MURPHY, ROGERS, SLOSS & GAMBEL, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Charging lien; attorney fees; settlement; settlement authority; malpractice; abuse of discretion; res judicata; issue preclusion; equitable remedy.*

The trial court did not abuse its discretion in granting appellee's motion to enforce the charging lien. Appellee's services and skill procured the settlement award based upon which appellee sought to enforce the charging lien.

110447 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE EZ.D., ET AL.

Dismissed.

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

KEY WORDS: *Standing; termination of parental rights; R.C. 2151.414; legal custodian; R.C. 2151.353(A)(3); failure to file motion.*

Because appellant is not the biological parent to any of the children, and failed to file a motion to request legal custody during the course of the proceedings, she was without standing to challenge the juvenile court's award of custody to CCDCFS.