

CASE DECISION LIST

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September 3, 2020

107642 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANITA HOLLINS

Affirmed.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Inconsistent verdicts; mistrial; venue; manifest weight of the evidence; sufficiency of the evidence; crime-fraud exception to the attorney-client privilege; ineffective assistance of counsel; aiding and abetting; competency.*

Guilty verdicts on principal charges were not fatally inconsistent with acquittals on firearm specifications; the trial court did not abuse its discretion in denying the motion for mistrial where the codefendant revealed other codefendant's midtrial guilty plea; verdicts were not against the manifest weight of the evidence; verdicts were supported by sufficient evidence; trial court did not err in ruling that codefendant's attorney-client privilege was not overcome by crime-fraud exception; defendant was not deprived of effective assistance of counsel; jury instructions on aiding and abetting were not erroneous; no indicia of incompetence was shown during trial, so counsel did not err in failing to obtain the competency referral.

108885 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY CONNER

Reversed and remanded.

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

KEY WORDS: *Reconsideration; App.R. 26(A); R.C. 2953.73; postconviction DNA testing; reasons; abuse of discretion.*

The trial court's failure to provide an explanation for its rejection of Appellant's application for postconviction DNA testing under R.C. 2953.73(D) is contrary to law and constitutes an abuse of discretion.

108891 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MARIO D. BLUE v FAYE A. MCGUIRE, ET AL.

Affirmed.

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

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(Case 108891 continued)

KEY WORDS: Civ.R. 12(B)(6); Loc.App.R. 23; breach of contract.

The trial court's decision to grant defendants' Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted was appropriate where the complaint did not allege facts sufficient to support his claims.

108923	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAVON COOPER			

Affirmed.

Patricia Ann Blackmon, J., Mary J., Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Postarrest silence; court's questions; relevant evidence; manifest weight of the evidence; deadly weapon; sentence; attempted murder.*

Brief evidence concerning detective's inability to obtain an interview from defendant was not prejudicial substantive evidence of guilt, and was more akin to the course of investigation testimony; the court's leading questions to the victim did not create prejudicial error; the court did not admit irrelevant and prejudicial evidence concerning the victim's fear of defendant; convictions for attempted murder and felonious assault were not against the manifest weight of the evidence; the court's instructions as to deadly weapons were not prejudicially erroneous; the sentence was not erroneous.

108956	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
LTF 55 PROPERTIES, LTD. v CHARTER OAK FIRE INSURANCE COMPANY			

Reversed and remanded.

Mary Eileen Kilbane, J., Patricia Ann Blackmon, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; motion to compel; insurance claim; prompt notice; subrogation; breach of contract; bad faith; declaratory judgment.*

Defendant-insurer-appellee was not entitled to summary judgment on plaintiffs-insureds-appellants' claims. There was a genuine issue of material fact regarding whether appellee received prompt notice of Appellants' loss claim under all the circumstances and whether appellee's subrogation rights were impaired by the delayed notice. There were also issues of fact as to whether delayed notice prejudiced appellee and whether appellee denied appellants' claim in bad faith. In light of these fact issues, appellee was also not entitled to summary judgment on appellants' declaratory judgment claim.

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The trial court erred in granting summary judgment to appellee while appellants' motion to compel was pending.

108982 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
EAST CLEVELAND IAFF 500, ET AL. v CITY OF EAST CLEVELAND, ET AL.

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Sanctions; reduce monetary obligation to judgment; hearing; R.C. 2705.02; res judicata; R.C. Chapter 4711; standing; and Civ.R. 25.*

Issues raised and addressed in prior appeals are barred by res judicata. A union has standing to file an injunction on behalf of its members where at least one member suffers immediate or threatened injury as a result of the contested action. Where the complaint named the defendant-appellant City's mayor and fire chief in their official capacities as defendants, the defendant-appellant City was not prejudiced by the fact that the city no longer employed the named mayor and fire chief. Under Civ.R. 25, the individuals currently holding those official positions were automatically substituted for the named defendants and could be called as witnesses on behalf of the City.

109018 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v DANIEL BERMUDEZ

Reversed and remanded.

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

KEY WORDS: *Statute of limitations; commence; R.C. 2901.13; Crim.R. 4(D); reasonable diligence; warrant; toll; depart; state; purposely avoid prosecution; presumption; rebuttable; dismiss; evidentiary hearing; Cleveland Municipal Court Loc.R. 7.02.*

Trial court erred in denying defendant's motion to dismiss without conducting an evidentiary hearing.

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109059	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v FLORZELL PIPPEN			

Affirmed.

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

KEY WORDS: *Crim.R. 11(C)/guilty plea; mandatory term of imprisonment; community control sanctions.*

Appellant was advised of the possible sentencing range, the statute-required fine, being classified as a Tier III sex offender, and postrelease control. Additionally, appellant was found to be competent to stand trial, and during the plea colloquy, appellant's counsel stated that appellant was up to date with his psychiatric medications; appellant additionally stated that he was taking his medications as prescribed. The trial court substantially complied with Crim.R. 11(C)(2)(a) even though the trial court never specifically advised the defendant that prison was mandatory or that the defendant was ineligible for community control sanctions because the record reflected that the defendant was nevertheless subjectively aware that he faced mandatory prison time.

109087	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ISRAEL FORD			

Affirmed.

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

KEY WORDS: *Domestic violence; corporal punishment; parental discipline.*

While the courts in Ohio have recognized proper and reasonable parental discipline as an affirmative defense to a charge of domestic violence, the trial court, in rejecting appellant's claim that his conduct constituted proper and reasonable parental discipline, did not clearly lose its way and create a manifest miscarriage of justice in finding him guilty of domestic violence.

109109	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JONATHAN MARTINEZ RESTO			

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion to withdraw presentence guilty plea; Crim.R.*

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32.1; threat to sever attorney-client relationship; change of heart; collateral consequences to a plea; motion to withdraw as counsel.

The trial court did not abuse its discretion in denying defendant-appellant's motion to withdraw his presentence guilty pleas where (1) the accused was represented by highly competent counsel, (2) the accused was afforded a full hearing, pursuant to Crim.R. 11, before he entered his pleas, (3) after the motion to withdraw was filed, the accused was given a complete and impartial hearing on the motion, and (4) the record reveals that the court gave full and fair consideration to the plea withdrawal request. Where the trial court did not grant defense counsel's motion to withdraw and defense counsel acted on behalf of her client throughout the motion to withdraw hearing, the accused was represented during the entirety of the proceedings.

109112	EUCLID MUNI.	G	CIVIL MUNI. & CITY
URSULA WASHINGTON RUSSELL v MCDONALDS INC. #3737			

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: Civ.R. 60(B)/motion to set aside judgment; service; excusable neglect.

The trial court did not abuse its discretion in denying defendant corporation's Civ.R. 60(B) motion to set aside judgment because plaintiff properly served defendant the summons and the small claims complaint at its usual place of business, and defendant failed to demonstrate excusable neglect warranting relief.

109138	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LINUS UNDIANDEYE			

Affirmed and remanded.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Motion to withdraw guilty plea; presentence; abuse of discretion; consecutive sentences; nunc pro tunc entry.

Trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea where defendant was represented by counsel throughout the criminal proceedings, given a full Crim.R. 11 hearing before entering his guilty plea, was given a complete hearing on his motion to withdraw, and the court gave full and fair consideration to the withdrawal request; trial court made the requisite findings under R.C. 2929.14(C)(4) to impose consecutive sentences, but sentencing entry contained a clerical

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error in that it omitted one of the findings made by the court and included a different statutory finding; matter remanded for trial court to issue nunc pro tunc entry to reflect the findings actually made by the court at sentencing.

109272	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
GREGG BARTKO v TRACY LYN-MARIE KOTH BARTKO			

Affirmed.

Michelle J. Sheehan, J., Patricia Ann Blackmon, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Accelerated docket; personal jurisdiction; service of process; certified mail; Civ.R. 4.1; abuse of discretion; rebuttable presumption.*

Service upon Wife was presumed completed where the record demonstrates Husband followed Civ.R. 4.1, and Wife failed to rebut the presumption. The trial court therefore had personal jurisdiction over Wife when it entered a judgment of divorce.

109309	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CLE'SHAWN HARRIS			

Reversed and remanded.

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

KEY WORDS: *Jail-time credit; confinement; juvenile; R.C. 2967.191; R.C. 2152.18; secure facility.*

The trial court erred by denying appellant's motion for recalculation of jail-time credit. Appellant is entitled to credit for his confinement at the Cuyahoga County Juvenile Detention Center in relation to the juvenile case that was dismissed. Based on the record before this court, we are unable to determine whether appellant is also entitled to credit for the time he spent at Carrington Youth Academy in relation to the dismissed juvenile case. The matter is remanded for an evidentiary hearing to determine whether appellant was confined at Carrington Youth Academy such that he is entitled to jail-time credit for the time he spent there.

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109357	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.G., ET AL.			

Reversed and remanded.

Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concurs; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: *Permanent custody, manifest weight of the evidence, clear and convincing evidence.*

The trial court's decision to award permanent custody to CCDCFS was against the manifest weight of the evidence because there is no competent, credible evidence from which the court could have found that the essential statutory elements for permanent custody had been established by clear and convincing evidence.

109374	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV, DOM OR PRO
SHAVONDA L. BECK v MARSHA LALLY, ET AL.			

109429	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV, DOM OR PRO
SHAVONDA L. BECK v MARSHA LALLY, ET AL.			

Affirmed.

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

KEY WORDS: *Summary judgment; Civ.R. 56; negligence; service of process; final appealable order; negligent entrustment; Civ.R. 12; Civ.R. 3.*

The trial court properly granted summary judgment in favor of defendant-appellee Marsha on appellant's negligent entrustment claim. The trial court did not err or abuse its discretion in granting defendant-appellee Karyn's motion to dismiss based on insufficient service of process.

109444	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RONALD E. STARKS			

Affirmed.

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Aggravated murder; R.C. 2953.08(D)(3); motion to correct sentence; void; voidable; res judicata.*

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Trial court did not err in denying defendant's motion to correct sentence. Where trial court had subject matter jurisdiction over defendant's case and personal jurisdiction over defendant, alleged sentencing error rendered his sentences voidable, not void. Because defendant did not raise any issue with his sentences in his direct appeal, collateral attack of sentences based on alleged sentencing error was barred by res judicata.

109477	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE E.B., ET AL.			

Affirmed.

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

KEY WORDS: *Legal custody; interested individual; permanent custody; termination; best interest; clear and convincing evidence; R.C. 2151.414(D); incarceration; sexual abuse; endangering children; therapeutic foster family; R.C. 2151.353(E)(2); and R.C. 2151.353(A)(3).*

The record reflects that the trial court's grant of permanent custody to CCDCFS, and denial of legal custody to an interested individual, was in the best interest of the children; was supported by clear and convincing evidence; and was not an abuse of discretion or against the manifest weight of the evidence. Further, the filing of a statement of understanding in compliance with R.C. 2151.353(A)(3) does not mandate a court to grant legal custody because the juvenile court must also engage in a best interest analysis with regard to placement of the children.

109479	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE E.M.B.T., ET AL.			

Affirmed.

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

KEY WORDS: *Permanent custody; legal custody; parental rights; termination; R.C. 2151.414; best interest; sexual abuse; neglect; endangering children; prison; safety; manifest weight; intervene; prejudicial error; outcome.*

The juvenile court's decision as to each of the mother's three children to grant permanent custody to the agency was supported by competent, credible evidence in the record and was not against the manifest weight of the evidence. Two of the children were subject to sexual abuse in the home; all three children were the subject of neglect; and both the mother and the father or alleged

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father were in prison. The record supported the trial court's determination that granting permanent custody to the agency and terminating all parental rights, as opposed to legal custody to the maternal great uncle, was in each child's best interest. No prejudicial error occurred with the denial of the great uncle's motion for party status.