

CASE DECISION LIST

August 11, 2022

110338 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
A.A.O. v A.M.O.

110349 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
A.A.O. v A.M.O., ET AL.

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Divorce; R.C. 3105.171(B); separate property; marital property; abuse of discretion; reasonable; equitable; allocation of parental rights and responsibilities; R.C. 3109.04; child support; spousal support; R.C. 3105.18; attorney fees.*

The trial court did not abuse its discretion in determining that the \$75,000 down payment for the marital home came from Husband's premarital account and Husband's parents and therefore constituted Husband's separate property. The trial court did not otherwise abuse its discretion in its division of marital property, allocation of parental rights and responsibilities, spousal support order, or denial of Wife's request for attorney fees. While the trial court did not err or abuse its discretion in finding Wife voluntarily unemployed and imputing income to her for purposes of its child support calculation, the trial court erred in using an incorrect amount of spousal support when computing Wife's gross income on its child support computation worksheet.

110744 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHNATHON R. SCOTT

Affirmed.

Anita Laster Mays, P.J., and Cornelius J. O'Sullivan, Jr., J., concur; Kathleen Ann Keough, J., concurs in judgment only.

KEY WORDS: *R.C. 2907.02(A)(1)(b); R.C. 2923.02; rape; attempted rape; gross sexual imposition.*

Appellant's convictions are not against the manifest weight of the evidence.

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110763 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CLARENCE WILSON

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Murder; felonious assault; manifest weight of the evidence; prior inconsistent statements; unfair surprise; motion for new trial; juror misconduct; in camera review; grand jury proceedings.*

Defendant's convictions were supported by the manifest weight of the evidence where three witnesses testified that he was the driver of the car involved in a drive-by shooting, one witness testified that he was the shooter, and cell phone records placed him in the vicinity of the crime scene despite his statement to police that he was elsewhere at the time of the shooting.

The record did not support a finding of juror misconduct where one of the jurors was the defendant's assistant principal nearly ten years earlier and did not seem to remember the defendant.

Trial court properly denied a motion for new trial based on unfair surprise because a witness's prior inconsistent statements are generally not grounds for a new trial but may be used for impeachment purposes to attack the witness's credibility.

Defendant failed to demonstrate a particularized need for an in camera inspection of grand jury transcripts simply because a witness initially provided an inconsistent statement to police, and the witness revised the statement prior to trial.

110787 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICKHAL GARRETT v CUYAHOGA COUNTY, ET AL.

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Civ.R. 37(A); Civ.R. 37(B)(1)(f); discovery request; sanction; pattern default judgment; abuse of discretion.*

We affirm the trial court's judgment granting default judgment as a sanction for appellant's repeated failure to respond to appellee's discovery requests and the trial court's orders.

Pursuant to Civ.R. 37(A), a party to a civil action may move for an order compelling discovery from another party who has failed to respond in full to formal discovery requests. Further, Civ.R. 37(B)(1)(f) provides that if a party fails to obey an order to provide

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or permit discovery, including an order made under Civ.R. 37(A), the trial court may issue further just orders, including entering a default judgment against the disobedient party.

In this matter, appellant failed to engage in the litigation, ignored scheduling orders, repeatedly failed to respond to discovery requests, and failed to comply with the trial court's orders. As such, we find no abuse of discretion in the trial court's decision.

110858 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v R.W., SR.

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Due process; jail clothing; ex parte communication; Jud.Cond.R. 2.9(A); Evid.R. 611; Evid.R. 403; vouch; credibility; manifest weight; Reagan Tokes Law.*

Appellant was not denied due process of law when, over objection, he appeared in jail clothing in front of the jury. The appellant's prior conduct revealed to the jury that he was in custody. The jury's verdict demonstrated that it was able to deliberate objectively and fairly despite seeing the appellant in jail clothing. Trial court did not engage in ex parte communication that materially prejudiced the appellant. The communication reiterated what occurred earlier, which was in the appellant's presence. The trial court's denial of allowing appellant to recall a state's witness was not an abuse of discretion because the testimony would have been cumulative and caused unnecessary delay. Witness did not vouch for the credibility of child-victim because the witness did not testify that she believed the victim or whether the victim was being truthful. Appellant's rape and sexual battery convictions were not against the manifest weight. Although the jury heard testimony that the DNA was inconclusive, the jury also heard testimony from the victim that would explain or justify the absence of the physical evidence.

111019 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARKWAN HALL

Affirmed.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Motion to suppress; Fourth Amendment; search; seizure; automobile exception; probable cause; confidential informant; marijuana; odor.*

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Probable cause existed to justify a traffic stop where an undercover officer observed a vehicle commit a traffic violation and informed another officer of this observation. Probable cause existed to conduct a search of the vehicle when the officer conducting the traffic stop, a K-9 handler, smelled an odor of raw marijuana. Appellant did not receive ineffective assistance of counsel where trial counsel did not make an argument in a motion to suppress that was unsupported by Ohio law.

111040 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DARVON JOHNSON

Affirmed.

Mary J. Boyle, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Motion to suppress; reasonable suspicion; articulable facts; probable cause; Fourth Amendment; competent, credible evidence; marijuana; odor; ineffective assistance of counsel.

Judgment affirmed. The record established sufficient reasonable suspicion and probable cause to justify the stop of the vehicle based on another officer's observations, and the defendant's subsequent detention and search of the vehicle. As a result, the trial court properly denied defendant's motion to suppress. Furthermore, defendant received effective assistance of counsel when defendant's argument is based on presumptions unsupported by the record.

111089 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ROY L. DANCYBEY v MIA DANCY-DUNLAP, ET AL.

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

KEY WORDS: R.C. 2307.60; R.C. 2307.61; treble damages; attorney fees; hourly rate; reasonableness of fees.

Trial court erred in not awarding appellant treble damages under R.C. 2307.61 where appellant prevailed on his claim that involved a theft offense and was therefore entitled to his chosen remedy of treble damages. Trial court did not abuse its discretion in adopting magistrate's decision that did not award attorney fees where the value of the property that was the subject of the theft offense exceeded \$5,000.

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111101 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: B.A., JR.

Affirmed.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Manifest weight; credibility; juvenile; adjudication; delinquency; felonious assault.*

The juvenile's delinquency adjudication is not against the manifest weight of the evidence.

111162 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TYSHAWN SHEPARD

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Felony; sentencing; Reagan Tokes; minimum; maximum; separation of powers; due process; jury trial; constitutional; second degree.*

Under the prevailing jurisprudence, the Reagan Tokes Law is constitutional and does not violate the separation-of-powers doctrine or the defendant's right to a jury trial or due process of law.

111177 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
STATE OF OHIO v CORTEZ YOUNG

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21, timeliness; R.C. 2953.23; pro se litigant; presumption of knowledge of law and procedure.*

Petition for postconviction relief was filed more than 365 days after the transcript of the proceedings were filed in the direct appeal and was thus untimely pursuant R.C. 2953.21. Petitioner did not argue that he was unavoidably prevented from discovering the evidence upon which he relied in the untimely petition as required by R.C. 2953.23. The trial court did not err by denying the untimely petition for postconviction relief as it had no jurisdiction to hear the

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petition. Petitioner's pro se status did not excuse the untimely filing where a pro se litigant is held to the same standards as an attorney, must follow the same procedures as if represented by counsel, and is presumed to have knowledge of law and legal procedure.

111183 CLEVELAND MUNI. G Civil Muni. & City
SHAKER HOUSE LLC v CHRISTOPHER DANIEL

Reversed and remanded.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Forcible entry and detainer; eviction; local rule of practice; substantive laws; conflict.

Local rule of municipal court that prevented landlord from obtaining eviction is invalid because it conflicts with substantive laws enacted by the legislature.

111251 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: Q.S.

Affirmed.

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

KEY WORDS: Parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.414; clear and convincing evidence; best interest of the child; legal custody.

The record contains clear and convincing evidence to support the juvenile court's finding that the child was in the agency's custody for 12 months or longer for a consecutive 22-month period and that it was in the best interests of the children to grant permanent custody to the agency. The juvenile court's grant of permanent custody of the child to the agency was not against the manifest weight of the evidence nor did the trial court err in evaluating the evidence before it.

111323 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE D.H., ET AL.

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Permanent custody; best interest of child; CCDCFS; R.C. 2151.414; clear and convincing evidence; abuse of discretion; weight of the evidence; ineffective assistance of counsel.

Affirming the juvenile court's grant of permanent custody to CCDCFS. The evidence supported the court's findings that the children were in the temporary custody of CCDCFS for more than 12 months of a consecutive 22-month period, Mother was not amenable to services, and Mother was unable to meet children's basic needs or provide a safe and secure permanent home for the children. Counsel for Mother was not ineffective for failing to object to the admission of exhibits or alleged hearsay. The exhibits were self-authenticating, the challenged testimony was not hearsay, and to the extent that any of the testimony was hearsay, the record shows that the juvenile court was capable of disregarding it and did not rely on it in reaching its custody determination.