

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

June 28, 2018

**105091** CLEVELAND MUNI. G CIVIL MUNI. & CITY  
CITY OF CLEVELAND v EMBASSY REALTY INVESTMENTS, INC., ET AL.

Affirmed in part; reversed in part and remanded.

Mary Eileen Kilbane, P.J.; Melody J. Stewart, J., concurs; Tim McCormack, J., dissents in part (see separate opinion).

**KEY WORDS:** *Demolition; costs; collection; C.C.O. 3103.09; statute of limitations; Civ.R. 19; indispensable party; piercing the corporate veil.*

*The trial court properly denied defendant-appellant's motion to dismiss the city's amended complaint in a collection action seeking its nuisance abatement costs for demolition of a condemned commercial building once owned by defendant-appellant. After defendant had received notice of the building code violations and the building's condemnation, he transferred his interest in the property by quitclaim deed to a corporate entity of which he was the sole officer and shareholder. However, the trial court improperly granted summary judgment against defendant and in favor of the city under a piercing-the-corporate-veil theory of liability because the city failed to satisfy all elements under the test established by the Ohio Supreme Court in *Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Cos.*, 67 Ohio St.3d 274, 1993-Ohio-119, 617 N.E.2d 1075, and as modified by *Dombroski v. WellPoint, Inc.*, 119 Ohio St.3d 506, 2008-Ohio-4827, 895 N.E.2d 538. A genuine issue of material fact exists as to whether the defendant personally maintained the nuisance after he sold the property to the corporate entity.*

**105887** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ILLUMINATING COMPANY v WILLIAM COCHRAN, ET AL.

**105888** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ILLUMINATING COMPANY v WILLIAM C. FLYNN

**105889** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ILLUMINATING COMPANY v FREDERICK A. BOZEMANN

**105890** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ILLUMINATING COMPANY v EUGENE WILLIAMS

Reversed and remanded.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Melody J. Stewart, J., concur.

**KEY WORDS:** *Motion for summary judgment; genuine issue of material fact; damages; indirect damages; reasonable certainty; depreciation; utility pole.*

## CASE DECISION LIST

(Case 105890 continued)

**Judgment reversed. The trial court's decision granting summary judgment in favor of utility company was improper when genuine issues of material fact remain with respect to indirect costs and depreciation.**

<b>105975</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v GLEN BURKS, II			

Affirmed.

Frank D. Celebrezze, Jr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS: Gross sexual imposition; sexual imposition; kidnapping; Evid.R. 404(B); other acts evidence; limiting instructions; sufficiency of the evidence; manifest weight of the evidence.**

**The trial court did not abuse its discretion by permitting the other acts evidence. The trial court did not commit plain error by providing the entirety of the language of Evid.R. 404(B) as its limiting instructions to the jury. Testimony did not support an instruction of "safe place unharmed" instruction regarding the kidnapping count. The state presented sufficient evidence to support the sexual imposition, gross sexual imposition, and kidnapping convictions and those convictions were not against the manifest weight of the evidence.**

<b>106197</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v COREY MIDDLETON			

<b>106200</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v COREY MIDDLETON			

<b>106202</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v COREY MIDDLETON			

Affirmed and remanded.

Melody J. Stewart, J., Tim McCormack, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: R.C. 2929.14(C)(4); consecutive sentences; findings.**

**Trial court failed to incorporate in the journal entry all findings required to impose consecutive sentences under R.C. 2929.14(C)(4).**

## CASE DECISION LIST

**106221** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BRET M. BETLEY

Reversed and remanded.

Mary Eileen Kilbane, P.J., Melody J. Stewart, J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Restitution; R.C. 2929.18; economic loss; credit card; theft; evidentiary hearing.*

*The trial court's restitution order was not supported by sufficient competent, credible evidence to establish the appropriate amount of restitution to a reasonable degree of certainty. The trial court based the restitution orders in each of the defendant's two cases on the amounts recommended by the victim in his victim impact statements. These amounts varied from the restitution amount noted in the PSI and as reported by the victim in the police report. The victim was not present at the sentencing hearing to explain the discrepancy, nor did the state introduce separate evidence to support either amount. An evidentiary hearing is required to determine the appropriate amount of restitution.*

**106243** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BELLAIRE CORPORATION v  
AMERICAN EMPIRE SURPLUS LINES INSURANCE COMPANY, ET AL.

Affirmed.

Eileen T. Gallagher, J., Tim McCormack, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Insurance coverage; breach of contract; declaratory judgment; occurrence; property damage; legally obligated to pay; acid mine drainage; routine business expenses; preventive measures; past remediation.*

*Trial court properly granted summary judgment to insurers on corporation's claims for breach of contract and declaratory judgment where flooding of coal mine was a foreseeable responsibility of the corporation pursuant to its mining permit and was therefore not a covered occurrence under the insurer's policies.*

**106307** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
LANA HENDERSON-AUSTIN v MTU AKILI

Affirmed.

Anita Laster Mays, J., Tim McCormack, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Common-law marriage, R.C. 3105.12, App.R. 16, content of appellate briefs, regularity of proceedings.*

*The trial court correctly determined that appellant failed to establish by clear and convincing evidence that a common-law marriage existed prior to the statutory abolishment of common-law marriage in 1991. The admission of evidence and the trial court's determinations regarding the control of a trial court's docket will not be overturned absent an abuse of discretion. Legal arguments must be supported by relevant case law. App.R. 16. Regularity of the proceedings is presumed where a transcript has not been filed.*

**106382** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BLISSWOOD VILLAGE HOME OWNERS ASSOCIATION v  
GENESIS REAL ESTATE HOLDINGS GROUP, LLC

Dismissed.

Mary Eileen Kilbane, P.J., Melody J. Stewart, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Foreclosure; confirmation of sale; mootness; party purchaser; subject matter jurisdiction.*

*Appeal from confirmation of foreclosure sale was moot because defendant-appellant failed to obtain a stay of the distribution of the proceeds of the sale. Thus, the judgment was satisfied and there was no live controversy before the court. Defendant-appellant's argument that Fannie Mae v. Hicks, 2016-Ohio-8484, 77 N.E.3d 380 (8th Dist.), created an exception to the mootness doctrine was unpersuasive. The foreclosing plaintiff's purchase of the property did not negate defendant-appellant's failure to file an appeal from the foreclosure order or its subsequent failure to obtain a stay of the distribution of the proceeds of the sheriff's sale of the property.*

**106503** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
PARMATOWN SOUTH ASSN. v ATLANTIS REALTY CO., LTD.

Affirmed.

Melody J. Stewart, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Summary judgment; fraud; Uniform Fraudulent Transfer Act.*

*Court did not err by granting summary judgment on fraud claim where there was no evidence to show that general contractor agreed that its acceptance of payment for work previously done on construction project induced the client to believe that it would encompass payment for additional work required to complete the project.*

## CASE DECISION LIST

(Case 106503 continued)

**Plaintiff did not assert a viable claim under the Uniform Fraudulent Transfer Act because it was not a creditor as required by the act — it was the debtor who made a payment to the creditor-general contractor.**

**106524** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
FREDRICK S. ELSNER v CURTIS L. BIRCHALL, M.D., ET AL.

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS: *New trial, Civ.R. 59(A), juror misconduct, Evid.R. 606(B), manifest weight.***

***The trial court did not abuse its discretion in denying the appellant's motion for a new trial based on juror misconduct. Further, because the appellant failed to file a transcript of the proceedings, we cannot say that the jury's verdict was against the manifest weight of the evidence. Finally, it was not error for the original trial judge, who did not preside over the trial, to rule on the appellant's motion for a new trial because the original trial judge had a copy of the voir dire transcript.***

**106539** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v D.K.

Affirmed.

Eileen A. Gallagher, A.J., Mary J. Boyle, J., and Anita Laster Mays concur.

**KEY WORDS: *Application to seal record of convictions; R.C. 2953.32; weighing of interests of applicant in having record of conviction sealed against the legitimate needs of the state to maintain record of conviction.***

***Trial court did not abuse its discretion in denying defendant's application to seal record of convictions under R.C. 2953.32 where it found that the state's interests in maintaining the record of convictions to enforce condition of plea agreement that defendant would not start another daycare business and to minimize the likelihood that defendant would become involved in some other business that handled government vouchers or other forms of state funding outweighed defendant's interest in having the record sealed so that he could secure better employment.***

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 6 of 6

**106701** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: S.C., ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Permanent custody; manifest weight; best interest; legal custody; R.C. 2151.414; standing; clear and convincing evidence; temporary custody; R.C. 2151.415; parental rights; reasonable efforts; R.C. 2151.419; relative.*

*The trial court's determination that permanent custody is in the children's best interest is support by clear and convincing evidence in the record. Because permanent custody to appellee is in the children's best interest, legal custody to the paternal grandmother necessarily is not. Accordingly, the trial court's judgment granting permanent custody of the children to appellee and denying the motions for legal custody to the paternal grandmother is affirmed.*