

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 25, 2018

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

Dismissed.

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

**KEY WORDS:** *Demolition; costs; collection; piercing-the-corporate-veil theory; satisfaction of judgment; moot.*

*Appeal dismissed as moot. Defendant-appellant failed to obtain a stay of execution of the judgment. Plaintiff-appellee obtained judgment against defendant-appellant under a piercing-the-corporate-veil theory of liability for demolition costs of a building on property owned by a corporate entity of which defendant-appellant was the sole officer and shareholder. During the pendency of the appeal, the plaintiff-appellee city obtained satisfaction of the judgment through garnishment of defendant-appellant's wages and personal earnings. Defendant-appellant did not seek to stay execution of the judgment, and the judgment was voluntarily satisfied, rendering moot the appeal from the judgment.*

**106397** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v ANTON MCCALL

Reversed and remanded.

Mary J. Boyle, J., Melody J. Stewart, P.J., concurs; Frank D. Celebrezze, Jr., J., concurs in part and dissents in part with separate opinion.

**KEY WORDS:** *Double jeopardy; effect of a no contest plea; due process; explanation of circumstances.*

*When this court vacated the defendant's no contest plea in his direct appeal because the trial court failed to explain the effect of a no contest plea, double jeopardy did not attach. Upon remand, the defendant was placed in the same position he would have been in had he never entered into the plea. At the second plea hearing, however, the trial court failed to obtain an explanation of circumstances sufficient to find defendant guilty. Further, because there was insufficient evidence to find the defendant guilty of OVI, double jeopardy now attaches and the defendant must be discharged.*

## CASE DECISION LIST

**106434** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE: M.B.

Affirmed.

Eileen T. Gallagher, P.J., and Melody J. Stewart, J., concur; Sean C. Gallagher, J., concurs in judgment only with separate opinion.

**KEY WORDS:** *Juvenile; serious youth offender; sentence; objection; privilege; R.C. 2317.02(A); invocation hearing; confrontation clause; testimonial; waived; criminal proceeding; rehabilitated; ineffective assistance of counsel; amenability; mental health; journal entry; findings; R.C. 2152.14(E); sufficient; clear and convincing evidence.*

*The trial court did not err by limiting the scope of defense counsel's cross-examination of the state's witness. The trial court's finding that appellant is unlikely to be rehabilitated during the remaining period of the juvenile court's jurisdiction is supported by clear and convincing evidence. The trial court made all necessary findings as required under R.C. 2152.14(E)(1). Appellant was not deprived of his Sixth Amendment right to the effective assistance of counsel at the invocation hearing.*

**106475** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE

CHRISTINE PHELPS v MICHAEL SAFFIAN

Affirmed in part, reversed in part and remanded.

Eileen A. Gallagher, A.J., and Melody J. Stewart, J., concur; Sean C. Gallagher, J., concurs in part and dissents in part (with separate opinion).

**KEY WORDS:** *Motion to modify child support; change in circumstances; combined gross income more than \$150,000; R.C. 3119.04(B); imputation of income; retroactive award; R.C. 3105.73(B); attorney fees; civil contempt.*

*On remand, trial court did not abuse its discretion in increasing father's child support obligation due to a substantial change in circumstances. However, trial court's order imposing modified child support retroactive to date mother filed motion to modify violated appellate court's mandate. Trial court did not abuse its discretion in awarding mother \$38,855 toward her attorney fees under R.C. 3105.73(B). Trial court did not abuse its discretion in finding father to be in contempt of court where record supported finding that father had repeatedly failed to comply with court orders to produce financial documentation. Case remanded for issuance of a new child support order that imposes modified child support obligation retroactive to August 17, 2011 and for recalculation of child support arrearages.*

## CASE DECISION LIST

**106485** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAYSON HEAGGANS

Affirmed.

Tim McCormack, J., Mary Eileen Kilbane, P.J., and Mary J. Boyle, J. concur.

**KEY WORDS:** *Burglary; photo array; unduly suggestive; R.C. 2933.83; ineffective assistance of counsel; hearsay; manifest weight; sufficiency of the evidence.*

*Heaggans did not receive ineffective assistance of counsel where counsel did not file a motion to suppress a photo identification and did not object to alleged hearsay testimony because he was not prejudiced by either alleged failure. His convictions were supported by sufficient evidence and was not against the manifest weight of the evidence.*

**106542** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DARRYL HILL

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Plea, strict compliance, constitutional rights, allied offenses.*

*Trial court strictly complied with Civ.R. 11(C)(2) when advising appellant of his constitutional and nonconstitutional rights. Isolated comments and irrelevant questions did not create an inference that appellant did not appreciate the effect of his plea or the rights he was waiving. Offenses that occur on different days do not merge because they are committed separately. Domestic violence and burglary did not merge because the offenses were committed separately and with a separate animus.*

**106616** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TREG SHARPLEY

Affirmed.

Patricia Ann Blackmon, J., Tim McCormack, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Guilty plea; Crim.R. 11; sentencing.*

*Trial court complied with Crim.R. 11 and properly determined that no promises had been made to defendant before accepting guilty*

## CASE DECISION LIST

(Case 106616 continued)

**plea; sentence was not unlawful.**

<b>106652</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANDREY L. BRIDGES			

Affirmed.

Sean C. Gallagher, J.; Tim McCormack, P.J., concurs; Patricia Ann Blackmon, J., concurs in judgment only.

**KEY WORDS:** *Defendant's five-year delay from the final sentencing in filing a Crim.R. 32.1 postconviction motion to withdraw his plea militated against defendant's credibility especially in consideration of the fact that defendant's community control sanctions were revoked approximately a year after the final conviction.*

<b>106710</b>	GARFIELD HTS. MUNI.	G	CIVIL MUNI. & CITY
DOUG WOODS, DBA, WHAT A LOVELY HOME v CIERA MARCANO			

<b>106711</b>	GARFIELD HTS. MUNI.	G	CIVIL MUNI. & CITY
DOUG WOODS, DBA, WHAT A LOVELY HOME v ANNETTE KELLUM			

<b>106712</b>	GARFIELD HTS. MUNI.	G	CIVIL MUNI. & CITY
DOUG WOODS, DBA, WHAT A LOVELY HOME v MONIQUE WILLIS			

Reversed and remanded.

Eileen A. Gallagher, A.J., Eileen T. Gallagher, J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Forcible entry and detainer action; dismissal; fictitious name; R.C. 1329.01(A)(2), (D); R.C. 1329.10(B); title to real property.*

*Where subject properties were titled in a fictitious name plaintiff had reported the use of to the Ohio Secretary of State before taking title to the properties and before filing eviction actions, the trial court erred in dismissing his claims for damages on the ground that he was not the owner of the properties and the properties were titled in a fictitious name.*

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<b>106718</b>	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v VITA SHEVCHENKO			

Affirmed.

Sean C. Gallagher, J., Tim McCormack, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Parking violation; vacant lot; expired registration; failure to transfer; minor misdemeanor; Traf.R. 3; Crim.R. 4; Crim.R. 7.*

***The criminal action for violations of parking restrictions and other nonmoving violations was properly initiated through the use of a uniform traffic ticket, and the trial court did not err in amending the citation for the purposes of trial because the amendment did not constitute a material variance of the allegations.***