

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 7, 2019

**106556** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TONY E. ALEXANDER

Reversed and remanded.

Larry A. Jones, Sr., J., and Eileen A. Gallagher, P.J., concur; Eileen T. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *Evid.R. 404(B)/other-acts evidence; CrimR. 52(A)/harmless error.*

**The state's introduction of appellant's prior theft did not meet the Evid.R. 404(B) exceptions for admission of prior acts and was harmful and prejudicial to appellant.**

**106934** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KEYVON WIGGINS

Affirmed.

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

**KEY WORDS:** *R.C. 2953.08; R.C. 2929.11; R.C. 2929.12; purposes and principles of felony sentencing; seriousness and recidivism factors.*

**The defendant's 15-year sentence for various felony offenses was not contrary to law under R.C. 2953.08 where the trial court, in imposing the sentence, considered the seriousness and recidivism factors in R.C. 2929.12 in determining the most effective way to comply with the purposes and principles of sentencing set forth in R.C. 2929.11.**

**106968** ROCKY RIVER MUNI. C CRIMINAL MUNI. & CITY  
CITY OF WESTLAKE v CARL A. COLLINS, JR.

Affirmed.

Mary Eileen Kilbane, A.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Record on appeal; transcript.*

**The appellant has the duty to file the transcript or such parts of the transcript that are necessary for evaluating the trial court's decision. Failure to file the transcript prevents an appellate court from reviewing an appellant's assigned errors. Thus, absent a transcript or alternative record under App.R. 9(C) or (D), this court**

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**must presume regularity in the proceedings below.**

**106986** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GARRETT DUKES

Affirmed.

Mary Eileen Kilbane, A.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Concurrent sentences; separate crimes.*

*The Ohio Supreme Court has held: A defendant has no constitutional right to concurrent sentences for two separate crimes involving separate acts. Additionally, if the sentence for a particular offense is not disproportionately long, it does not become so merely because it is consecutive to another sentence for a separate offense or because the consecutive sentences are lengthy in aggregate.*

*Upon review, we find that the individual sentences imposed in Dukes's three separate cases are all within the statutory range. In addition, the sentences imposed were not disproportionate to Dukes's conduct, especially as it relates to the attempted felonious assault conviction. As a result, the complained-of sentences are not greatly disproportionate to the offenses as to shock the sense of justice of the community.*

**107013** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v F. F.

Reversed and remanded.

Mary Eileen Kilbane, A.J., Eileen A. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

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

*Appellant argues that the trial court failed to make the findings required for the imposition of consecutive sentences under R.C. 2929.14(C)(4). Pursuant to R.C. 2929.14(C)(4), in order to impose consecutive sentences, the trial court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender, that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and that at least one of the following also applies:*

*(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under postrelease control for a prior offense.*

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**(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.**

**(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.**

**Because the trial court failed to make all the findings under R.C. 2929.14(C)(4), the imposition of consecutive sentences was contrary to law and must be vacated.**

**107039** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v STEPHEN BROOKS

Affirmed.

Larry A. Jones, Sr., J., Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS: R.C. 2929.11 and 2929.12/sentencing; consecutive sentences; merger of counts.**

***The trial court found numerous reasons to justify a prison sentence for appellant and further made specific findings for the purpose of consecutive sentences. Appellant's sentence was not contrary to law.***

***The harm caused by appellant's breaking and entering and theft of the company's computer equipment was dissimilar. The trial court's failure to merge the two counts was not error.***

**107092** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DEBRA ELAM v WOODHAWK CLUB CONDOMINIUM, ET AL.

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS: Summary judgment; Civ.R. 56(C); breach; contract; fiduciary duty; condominium bylaws and declarations; negligent and wanton misconduct; declaratory judgment.**

***The trial court's judgment granting summary judgment to the condominium association is affirmed. Plaintiff did not meet her burden of establishing that genuine issues of material fact remain***

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regarding her claims of breach of contract, breach of fiduciary duty, negligent and wanton misconduct, and declaratory judgment. The clear and unambiguous terms of the association's declaration and bylaws established that plaintiff was responsible for the maintenance and repair of her heating and cooling system. There was no evidence that the association acted negligently or in a wanton manner, nor was there any evidence that the association breached a duty to plaintiff. Further, plaintiff did not present any evidence that the declaration and bylaws were unreasonable.

**107135** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ANDRE JENKINS v CITY OF CLEVELAND, ET AL.

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Petition to return property, summary judgment, lack of jurisdiction.*

*Trial court properly granted summary judgment after it found it lacked jurisdiction over the petition for return of property as the property that the petitioner sought was in the possession and control of the federal, not the state, government.*

**107144** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TERRENCE SIMMONS

Affirmed in part; reversed in part; remanded.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Crim.R. 11; knowing, voluntary, and intelligent plea; nonconstitutional notifications; restitution; merger; consecutive sentences; contrary to law; typographical error; journal entry.*

*Where a trial court imposes an appropriate sentence in open court at the sentencing hearing, it may correct a typographical error with a nunc pro tunc entry so that the sentencing entry reflects that sentence imposed at the hearing. R.C. 2929.12 factors are not part of the consecutive sentences analysis. A trial court may not order a defendant to pay restitution for economic loss for an amount that is not supported by the record.*

*A guilty plea does not violate Crim.R. 11 where the defendant claims the prosecutor stated that counts should merge during negotiations but argues against merger at sentencing. Crim.R. 11 does not require the trial court to determine restitution at the time of a guilty plea. Moreover, a defendant, by agreeing to pay restitution to one victim, does not prevent the trial court from*

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**requiring him or her to pay restitution to another victim.**

**107383** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOLANTA CARKIDO v RYAN D. SWEENEY, ET AL.

Reversed and remanded.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Motion to enforce settlement agreement; valid contract.*

*The recorded telephone conversations submitted as evidence failed to establish that there was a meeting of the minds; therefore no valid contract was formed, and appellant never executed a release. It was error for the trial court to grant appellee's motion to enforce the settlement agreement.*

**107451** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN THE MATTER OF: I.M.M.

Affirmed.

Mary Eileen Kilbane, A.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Motion to modify temporary custody to a permanent planned living arrangement ("PPLA"); R.C. 2151.353(A)(5); R.C. 2151.415(C)(1)(a); clear and convincing evidence; best interest of the child; permanent custody to the father.*

*Judgment affirmed. The juvenile court's decision to place I.M.M. in a PPLA was in his best interest and was supported by clear and convincing evidence. The court could not award permanent custody to father because I.M.M. was 18 years of age at the time of the hearing. The juvenile court does not have the authority to place an adult in the legal custody of another adult. The proper remedy would have been for father to ask that temporary custody be terminated in order to file for guardianship of I.M.M. through probate court.*