

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 9, 2019

**106978** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
J.R. v K.R.

Affirmed.

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

**KEY WORDS:** *Divorce proceedings, former R.C. 3119.04(B), child support, income exceeds \$150,000; R.C. 3105.171, division of property, commingled assets; R.C. 3105.73, attorney fees; R.C. 3105.18, temporary support.*

*The trial court's judgment is affirmed. Pursuant to former R.C. 3119.04(B), a trial court has broad discretion to award child support where the combined incomes exceed \$150,000. The children are entitled to maintain their current standard of living. Pursuant to R.C. 3105.171, a trial court also has broad discretion when creating an equitable division of property in a divorce proceeding based on the listed factors and any other factors the court deems appropriate. It is the duty of the party claiming ownership to trace commingled assets. A trial court considers the statutory factors and any other factors deemed appropriate in awarding attorney fees pursuant to R.C. 3105.73. Under R.C. 3105.18, the trial court is given considerable discretion to determine reasonable support based on the facts and circumstances of each case.*

**107124** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v K.S., ET AL.

Affirmed.

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

**KEY WORDS:** *R.C. 2953.36(A)(6); expungement.*

*The trial court did not err by not granting the appellants' motion to seal their criminal record. The appellants are not eligible to have their records expunged because the victims were under the age of 16 at the time the crime was committed.*

**107192** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
WALTER DERRICO v STATE OF OHIO

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Affirmed.

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

**KEY WORDS:** *Civ.R. 15(A)/motion to amend complaint; prima facie; R.C. 2743.48 (A)(2).*

*The trial court did not err where it dismissed appellant's complaint with prejudice and denied appellant's motion to amend appellant's complaint. Appellant filed his motion to amend the complaint outside of the time constraints of Civ.R. 15(A) and failed to make a prima facie showing that he met the criteria under R.C. 2743.48(A)(2) for wrongfully imprisoned individuals. Appellant pleaded guilty to the offenses and thereby became ineligible to file a claim under R.C. 2743.48(A)(2). Further, appellant did not challenge the constitutionality of R.C. 2743.48(A)(2) in the lower court, and therefore appellant's argument is not properly before this court.*

**107220** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: G.J.A.

**107575** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: G.J.A.

Affirmed.

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

**KEY WORDS:** *Former R.C. 3119.04(B), child support reduction factors, Juv.R. 40, objections to magistrate's decision, transcript supporting supplemental objections to magistrate's decision.*

*The trial court adequately justified and documented the factors underlying the reduction of the agency's child support award pursuant to former R.C. 3119.04(B). Appellant failed to file transcripts in the trial court pending the filing of timely objections and to request leave of court. The trial court properly adopted the magistrate's decision and overruled appellant's objections pursuant to Juv.R. 40.*

**107281** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANDRE L. BRIDGES

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Sentence; seriousness and recidivism factors; R.C. 2929.11; R.C. 2929.12.*

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(Case 107281 continued)

**Defendant's eight-year prison sentence for rape affirmed where (1) the trial court considered the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, (2) the record supported the trial court's findings under R.C. 2929.12, and (3) the sentence was within the statutory range for a first-degree felony.**

**107346** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMES BANKS

Affirmed.

Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur; Mary J. Boyle, P.J., concurs in judgment only.

**KEY WORDS: Motion to withdraw guilty plea.**

**Denial of motion to withdraw plea affirmed because the court complied with Crim.R. 11 and defendant's plea was knowingly, voluntarily, and intelligently made.**

**107357** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ISIAH ANDREWS

Reversed and remanded.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, A.J., and Raymond C. Headen, J., concur.

**KEY WORDS: R.C. 2953.71-84/DNA testing.**

**Evidence is to be considered in its totality under an outcome-determinative analysis. The trial court abused its discretion where it denied appellant's application for DNA testing.**

**107429** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v WARREN JONES

Affirmed.

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

**KEY WORDS: Prison; community control; bond; violate; condition; exception; presumption; contrary to law; sentence; fourth degree; fifth degree; R.C. 2929.13(B).**

**Because the circumstances set forth in R.C. 2929.13(B)(1)(b)(iii) and (xi) are supported by the record, the trial court had discretion to**

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(Case 107429 continued)

**impose a term of imprisonment rather than community control sanctions. Accordingly, the trial court did not err by sentencing defendant to an aggregate prison term of 29 months on his fourth- and fifth-degree felony offenses.**

**107447** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RODERICK J. MASON

Reversed and remanded.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS: *Crim.R. 43, R.C. 2929.191, modification of postrelease control.***

***The trial court erred by not holding a hearing upon remand from this court to impose the statutorily mandated term of postrelease control and allowing the defendant to be present during such a hearing. The trial court was required to hold a resentencing hearing to notify the defendant of the modification in open court under both Crim.R. 43 and R.C. 2929.191.***

**107485** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
D.L.W. v V.N.W.

Vacated.

Eileen T. Gallagher, P.J.; Mary J. Boyle, J., and Patricia Ann Blackmon, J., concur in judgment only.

**KEY WORDS: *Service of process; personal jurisdiction; show cause.***

***Trial court lacked authority to order Wife to transfer interest in property to Husband where Wife was never served with motion to show cause.***

**107503** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
N.W. v M.W.

Affirmed in part, reversed in part, and remanded.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS: *Child support; R.C. 3119.04; "high-income" family; standard of living; imputed income.***

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(Case 107503 continued)

The trial court was within its discretion to increase the amount of child support based on the children's standard of living and their needs as they grow older. Appellant husband's claim that the modified child support was de facto spousal support is without merit. The matter, however, is remanded to the trial court for a proper determination of appellant's child support obligation during the period between the court's interim order and its final order.

**107519** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CITY OF NORTH OLMSTED, OHIO v CHRISTOPHER FOX, ET AL.

Affirmed.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, A.J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *R.C. 4141.29(D)(2)(a)/unemployment compensation; just-cause termination; last-chance agreement ("LCA").*

*Where it was shown that appellant's employer did not have full knowledge of what treatment the trial court had ordered, appellant's employer was unable to determine if in fact appellant had violated the LCA. The trial court's judgment affirming the Ohio Unemployment Compensation Review Commission's decision was proper.*

**107524** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ROBERT THOMPSON

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Consecutive sentences; R.C. 2929.14(C)(4); R.C. 2929.11; R.C. 2929.12; felony sentencing; R.C. 2953.08(A)(2); appeal as of right; R.C. 2929.13(B); motion for leave; R.C. 2929.21; R.C. 2929.22; misdemeanor sentencing.*

*The trial court did not err in imposing consecutive sentences because it complied with R.C. 2929.14(C)(4) and made the requisite consecutive sentence findings. The trial court made the required statutory findings pursuant to R.C. 2929.13(B) to sentence appellant to a prison term. The trial court did not abuse its discretion in imposing a six-month jail sentence because it considered the sentencing factors under R.C. 2929.21 and 2929.22.*

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**107559** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MADDOX DEFENSE INC. v GEODATA SYSTEMS MANAGEMENT, INC.

Affirmed.

Patricia Ann Blackmon, J., Mary Eileen Kilbane, A.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Summary judgment; breach of contract; counterclaim; tortious interference with contract; tortious interference with business relationship; civil conspiracy; defamation; deceptive trade practices act; motion for enlargement of time; motion to partially strike; motion for reconsideration; court costs.*

*Trial court's granting summary judgment to plaintiff and against defendant on plaintiff's breach of contract claim and defendant's counterclaims affirmed, because defendant failed to show genuine issue of material fact for trial.*

**107564** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHRISTOPHER REESE

Affirmed.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Guilty plea; sentence; Crim.R. 11; fines; waiver; allied offenses; R.C. 2941.25.*

*Convictions affirmed. Appellant's plea was knowingly, voluntarily, and intelligently entered; the trial court did not err in imposing the mandatory fines; and the sentences were not imposed on allied offenses.*

**107573** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TRACE GARDNER

Affirmed.

Patricia Ann Blackmon, J., Mary Eileen Kilbane, A.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *R.C. 2907.02(A)(1)(c); sufficiency of the evidence; manifest weight of the evidence; Crim.R. 16(K).*

*Conviction for rape in violation of R.C. 2907.02(A)(1)(c) was supported by sufficient evidence and was not against the manifest weight of the evidence, where video evidence depicts that victim quickly became substantially impaired at work and was subsequently undressed, defendant was dressed and directed her*

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(Case 107573 continued)

**movements, then undressed; and defendant's DNA was found in rape-kit evidence; trial court did not abuse its discretion in permitting SANE nurse to testify where medical records were provided to defense and her testimony was consistent with them; trial court did not abuse its discretion in permitting BCI analyst to testify where report was provided, and instructed the defense on procedures for obtaining additional information concerning testing and protocols.**

**107801** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BRENT J. FRISCONE

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS: Presentence investigation report; drug test; guilty plea; Crim.R. 16; disclose.**

***Defendant's guilty plea was knowingly, voluntarily, and intelligently made; state did not violate its duty to disclose material to defendant where the state did not have the result of defendant's drug test prior to the plea hearing; trial court did not err in considering the positive drug test noted on the presentence investigation report.***

**107851** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: X.Q., ET AL.

Affirmed.

Patricia Ann Blackmon, J., Sean C. Gallagher, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS: Permanent custody; manifest weight; best interest; R.C. 2151.414.**

***The trial court's determination that permanent custody is in the children's best interest is supported by clear and convincing evidence in the record.***

**108003** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: J.W.

Affirmed.

Raymond C. Headen, J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

## **CASE DECISION LIST**

(Case 108003 continued)

**KEY WORDS: Permanent custody; termination of parental rights; reasonable efforts; incarcerated parent; abandoned; R.C. 2151.414; manifest weight of the evidence; best interest of the child.**

**Award of permanent custody to the agency was supported by clear and convincing evidence where one parent was deceased and the other was incarcerated and would not be released for more than 18 months after the dispositional hearing, child has significant specialized medical needs, and no other relatives were willing and able to care for the child.**