

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 30, 2019

**107142** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
TAREQ AHMED ALLAN v RAID A. ALLAN

Affirmed.

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

**KEY WORDS:** *Divorce; marital property; separate property; R.C. 3105.171; commencement of the marriage; during the marriage; de facto marriage date; attorney fees; R.C. 3105.73; financial misconduct.*

*The trial court did not abuse its discretion when it considered the value of two gas station businesses as marital property for purposes of dividing the marital estate after the trial court found that husband committed financial misconduct when he transferred the gas stations to his brother to prevent wife from obtaining a marital share in the gas stations. The trial court did not abuse its discretion when it awarded wife \$300,000 in attorney fees after it found that husband's financial misconduct and obstructionist actions and testimony throughout the trial complicated and prolonged the case.*

**107343** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: ESTATE OF ELASE JENKINS

Affirmed.

Michelle J. Sheehan, J., Mary Eileen Kilbane, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Probate; administrator of the estate; appointment; preferred class; suitable person; R.C. 2113.05 and 2113.06; abuse of discretion; no transcript; presume regularity; inventory and appraisal; R.C. 2115.02; exceptions; magistrate's decision; objections; Civ.R. 53(D)(3); final account; R.C. 2109.301.*

*The trial court did not abuse its discretion in appointing a nonheir as administrator of the estate. In the absence of a transcript of the lower court proceedings, we presume the trial court considered and rejected the preferred family members and found a nonfamily member more suitable as an administrator of the estate. There is no basis upon which the reviewing court can discern the alleged errors in the trial court's decision. Likewise, in the absence of a transcript, neither the trial court nor the reviewing court could find evidence supporting the appellant's allegations of error regarding the trial court's approval of the inventory and appraisal as well as the final account.*

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**107483** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
GALLAGHER SHARP LLP v MILLER GOLER FAEGES LAPINE LLP, ET AL.

Affirmed.

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

**KEY WORDS:** *Summary judgment; Civ.R. 56; contract; insurance policy; intended third-party beneficiary; breach.*

*Plaintiff was an intended third-party beneficiary of the insurance contract between defendant and its malpractice insurance provider because the contract required defendant to pay plaintiff's legal fees for its representation of defendant's employee. By refusing to pay plaintiff's legal fees as required under the insurance contract, defendant breached the contract. Because the insurance contract was unambiguous, the trial court did not err by not construing the contract in defendant's favor.*

**107615** SHAKER HTS. MUNI. G CIVIL MUNI. & CITY  
MENORAH PARK CENTER FOR SENIOR LIVING v IRENE ROLSTON

Reversed and remanded.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Common law tort; unauthorized, unprivileged disclosure; medical information; Health Insurance Portability and Accountability Act of 1996; HIPAA; preempt.*

*Reversed trial court's decision to grant a Civ.R. 12(B)(6) motion to dismiss the counterclaim. The counterclaim set forth a valid common-law claim for the unauthorized, unprivileged disclosure to a third party of nonpublic medical information, which is not preempted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").*

**107645** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHAEL MARBUERY DAVIS

Affirmed.

Mary Eileen Kilbane, A.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Limited remand; resentencing; de novo resentencing; driver's license suspension; mandatory; discretionary; R.C. 2925.03.*

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(Case 107645 continued)

**Judgment affirmed. At the time appellant was originally sentenced, the law required a mandatory driver's license suspension. Had the change in R.C. 2925.03(D) been in effect at the time of appellant's initial sentencing, there would have been no error in the court's sentence and no basis for a remand. The fact that the General Assembly chose to make driver's license suspensions under this section discretionary rather than mandatory did not affect the prison sentences that were imposed by the trial court and affirmed by this court in appellant's prior appeal. As a result, a de novo resentencing was not necessary.**

**107682** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: THE GUARDIANSHIP OF NORMAN BEATY

Affirmed in part and reversed in part.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS: Guardianship; attorney fees; Prof.Cond.R. 1.5/factors for consideration in determining reasonableness of fees; Loc.R. 71.3/attorney fees as expense to administer guardianship; magistrate's decision.**

**The trial court erred in adopting the magistrate's decision, in part. The trial court correctly amended the amount owed to appellant/cross-appellee on his initial application for attorney fees but erred and abused its discretion in awarding more than the magistrate recommended on appellant/cross-appellee's second application for attorney fees.**

**107880** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DALE RODANO

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS: Affirmed; delayed motion for new trial; Crim.R. 33; new evidence; ineffective assistance; newly announced decisions.**

**Crim.R. 33 does not provide for a delayed motion for new trial based on newly announced decisions, and as a result, the trial court did not err in denying the defendant leave to file such a motion.**