

## CASE DECISION LIST

February 20, 2020

**107783** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
EVANGELOS STAMATOPOULOS, ET AL. v ALL SEASONS CONTRACTING, INC., ET AL.

**107788** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
EVANGELOS STAMATOPOULOS, ET AL. v ALL SEASONS CONTRACTING, ET AL.

Affirmed in part, vacated in part.

Raymond C. Headen, J., Mary Eileen Kilbane, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Replevin; R.C. 2737.01 et seq.; bond; order of possession; settlement agreement; cognovit note; 42 U.S. 1983; wrongful seizure; due process; jury instructions; conversion; directed verdict; attorney fees; new trial; damages.*

*Any error in the court's jury instructions on a party's Section 1983 claims is moot where the claims should not have been submitted to the jury as a matter of law. There is no actionable Section 1983 claim against an individual for executing a replevin order of possession pursuant to R.C. 2737.06. The court's grant of a directed verdict motion on appellant's conversion claim was proper where there was insufficient evidence of a demand and refusal. A party is not entitled to attorney fees where it did not prevail on its claim for breach of a settlement agreement. A party is not entitled to a new trial on damages where it did not prevail on any claim that would support an award of damages.*

**108311** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RANAU JOHNSON

Vacated in part and remanded.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Resentencing; mandate; restitution; nunc pro tunc; waiver of jury trial; res judicata; allied offenses; ineffective assistance of counsel.*

*Trial court exceeded the mandate for resentencing upon remand but its error was harmless because it did not alter the valid and final sentences imposed at the original sentencing; trial court ordered to enter nunc pro tunc entry because although trial court did not order restitution at resentencing, the resentencing entry ordered defendant to pay restitution; defendant's arguments regarding his waiver of a jury trial, allied offenses, lesser included offenses, and ineffective assistance of counsel were all barred by res judicata because they could have been raised on direct appeal.*

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**108332** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAVID G. FORSTON

Affirmed.

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

**KEY WORDS:** *Consecutive sentences; clear and convincing standard; statutory findings; contrary to law.*

*Appellant challenged the trial court's imposition of consecutive sentences, arguing that the court did not engage in the requisite analysis. The trial court did engage in the appropriate analysis, and appellant's sentence was not contrary to law.*

**108352** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TEXAS LIFE INSURANCE COMPANY v VALERIE WAINWRIGHT PECK, ET AL.

Affirmed.

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

**KEY WORDS:** *R.C. 2323.512/award of attorney fees; Civ.R. 11/signing of pleadings/sanctions.*

*Appellant failed to establish that appellees' claim of undue hardship was not a difficult claim to prove — expensive to pursue, or that their claim was frivolous. The trial court did not err where it denied appellant's motion for attorney fees and sanctions.*

**108374** LAKEWOOD MUNI. G CIVIL MUNI. & CITY  
YOLANDA HOLLIDAY v CALANNI ENTERPRISES, INC.

Reversed and remanded.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Small claims; continuance; hearing; abuse of discretion.*

*The trial court abused its discretion in not granting a continuance where documentation was provided to the court that the defendant was at the hospital with a family member.*

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**108386** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v AUTO REVERE

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *R.C. 2903.11(A)(1), felonious assault, R.C. 2905.01(A)(3), kidnapping, allied offenses, merger, R.C. 2953.08, consecutive sentence, maximum sentence, R.C. 2929.11, R.C. 2929.12, felony sentence, Crim.R. 11(C)(2), guilty plea.*

*Appellant's convictions for felonious assault and kidnapping do not merge. The evidence demonstrates they were separate offenses with separate animus and harm. Appellant's sentence is within the statutory range and is not contrary to law. The trial court made the requisite findings for consecutive sentences per R.C. 2929.14. Pursuant to Crim.R. 11(C)(2), appellant's guilty plea was knowingly, intelligently, and voluntarily made.*

**108415** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TOMMIE W. SMITH

Affirmed.

Patricia Ann Blackmon, P.J., Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Jury instructions; abduction; manifest weight of the evidence.*

*The trial court did not abuse its discretion in instructing the jury on the lesser-included offense of an abduction. Defendant forced the victim into his car against her will and drove off. Abduction conviction is not against the manifest weight of the evidence.*

**108422** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BRIAN WOMACK

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Jail phone call; Evid.R. 801; admission by a party opponent; sufficiency of evidence; aggravated robbery; R.C. 2911.01(A)(1); manifest weight of the evidence; allied offenses; merger.*

*Trial court did not abuse its discretion in admitting defendant's jail phone call into evidence because it was an admission by a*

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(Case 108422 continued)

**party-opponent even though it was not a specific admission of the defendant's guilt; defendant's conviction for aggravated robbery was supported by sufficient evidence where defendant brandished a gun, thereby threatening harm to the victim during the carjacking; defendant's convictions were not against the manifest weight of the evidence; defendant's convictions for aggravated robbery were not allied offenses and did not merge for sentencing because there were two victims.**

**108469** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JACQUEZ R. MCGILL

Affirmed.

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

**KEY WORDS: Guilty plea; Crim.R. 11; knowing, intelligent, and voluntary; right to testify; judicial release.**

**Defendant's guilty plea was knowing, intelligent, and voluntary. The trial court complied with Crim.R. 11, properly informed the defendant that he would be ineligible for judicial release pursuant to his plea agreement, and was not required to inform him that he had the right to testify, or not, at his trial.**

**108565** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE J.H.

Affirmed.

Eileen A. Gallagher, J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS: Plain error; parental duty of support; R.C. 3119.07(C); R.C. 3119.06; minimum child support order; supplemental security income benefits.**

**Juvenile court did not commit plain error in imposing minimum child support order on mother after child was placed in legal custody of paternal aunt notwithstanding mother's receipt of supplemental security income benefits. Without a transcript from which to determine the factual basis for the decision to impose a minimum support order, regularity of the proceedings in the juvenile court must be presumed.**

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**108790** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GEORGE YOUNG

Affirmed.

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

**KEY WORDS:** *Crim.R. 34/motion for arrest of judgment; Crim.R. 12(C)(2)/defenses and objections to the indictment; res judicata; ineffective assistance of counsel.*

*Appellant's motion for arrest of judgment was untimely. Further, appellant filed a direct appeal and could have included the issue of an allegedly defective indictment at that time. Additionally, appellant included in his direct appeal his claim of ineffective assistance of counsel, and appellant was overruled. Appellant's claims are now barred by the doctrine of res judicata.*

**108843** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v ANTHONY FORD

Affirmed and remanded.

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

**KEY WORDS:** *Petition for postconviction relief; ineffective assistance of counsel; sexual offender; void; postrelease control; nunc pro tunc.*

*The trial court did not abuse its discretion in denying Ford's petition for postconviction relief because he has not shown that he was unavoidably prevented from discovering facts relating to his petition or that any new federal or state right applies. However, his argument regarding postrelease control has merit in part. Although the trial court properly advised Ford of postrelease control at the sentencing hearing, it failed to include the proper advisements in the sentencing journal entry. Thus, the sentencing entry was not the "minimally compliant" as required under State v. Grimes, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, which was decided after Ford was sentenced, but applies retroactively. The trial court's sentencing entry error, however, can be corrected through a nunc pro tunc entry.*

**108969** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE CA.T., ET AL.

Affirmed.

Raymond C. Headen, J., Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur.

***KEY WORDS: Permanent custody; termination of parental rights; R.C. 2151.414; clear and convincing evidence; best interest of the child; ineffective assistance of counsel.***

***Award of permanent custody to the agency was supported by clear and convincing evidence. Mother did not receive ineffective assistance of counsel.***