

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 30, 2020

**108782** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SEAN GRIFFIN v CHURNEYS BODYWORKS, INC., ET AL.

Affirmed.

Mary Eileen Kilbane, J., and Kathleen Ann Keough, P.J., concur; Michelle J. Sheehan, J., concurs in judgment only.

**KEY WORDS:** *Civ.R. 37; R.C. 2323.51; motion for sanctions; Civ.R. 41; voluntary dismissal; jurisdiction; right to appeal; deposition; discovery.*

*Plaintiff-appellant appealed the trial court's decision to grant the defendants-appellees' motion for sanctions, filed pursuant to Civ.R. 37 and R.C. 2323.51. Appellant argued that the trial court lacked jurisdiction to rule on the motion because it had been filed after a Civ.R. 41 voluntary dismissal. Appellant also argued that the sanctions imposed were excessive.*

*We found that the trial court had jurisdiction because the motion was filed pursuant to R.C. 2323.51 and is therefore a collateral issue that survives a voluntary dismissal.*

*Appellant also waived his right to appeal whether the costs and fees imposed were excessive. At the hearing, appellant agreed to the amount of fees and costs, withdrawing his objections.*

**108813** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
CHARLES W. THOMASSON v CAROL J. THOMASSON

Affirmed in part, reversed in part, and remanded.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *R.C. 3105.18(C)(1)/spousal support/arrearages; R.C. 3105.171/division of marital and business property; Loc.R. 35/guardian ad litem fees/hearing; due process.*

*The trial court did not abuse its discretion in determining the final amount for spousal support and the amount of support arrearage where competent, credible evidence was presented.*

*The value of the contents of the marital home and the marital business was properly determined. The trial court maintained its jurisdiction in this matter in the event appellee/cross-appellant failed to disburse to appellant/cross-appellee her half interest in the business upon the sale of the business. The marital and business property were equitably divided, and there was no abuse of discretion by the trial court.*

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(Case 108813 continued)

**It was an abuse of discretion where the trial court failed to conduct a hearing on the issue of the guardian ad litem fee bill.**

**Appellee/cross-appellant failed to establish any identifiable prejudice on the issue of a continuance for rebuttal testimony; the redacted attorney-fee bill was properly admitted.**

**Appellee/cross-appellant suffered no violation of due process.**

**108900** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LAKEVIEW HOLDING (OH), LLC (LAKEVIEW HOLDING, LLC) v IRENE R. FARMER, ET AL.

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS: Jurisdiction; final, appealable order; dismissal without prejudice; refiled action; savings statute; R.C. 2305.19; tax certificate; foreclosure; R.C. 5721.36; R.C. 5721.37; standing; certificate holder.**

***Trial court's dismissal without prejudice of complaint that had been refiled under savings statute was a final, appealable order because it, in effect, functioned as a dismissal with prejudice, barring the plaintiff's ability to ever refile the case. Trial court did not err in dismissing refiled tax certificate foreclosure action for lack of standing where plaintiff was no longer the holder of the tax certificates when the complaint was refiled.***

**108937** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MARVIN F. JOHNSON, SR.

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Raymond C. Headen, J., concur.

**KEY WORDS: Motion to withdraw guilty plea; ineffective assistance of counsel; res judicata.**

***Appellant's ineffective-assistance-of-counsel claim, upon which his motion to withdraw the guilty plea was predicated, could have been raised on direct appeal and is therefore barred by res judicata.***

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**109037** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TREASURER OF CUYAHOGA COUNTY, OHIO v CHRIS FRANKOVIC

Affirmed.

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

**KEY WORDS:** *Foreclosure; continuance.*

***The trial court's decision denying appellant's motion for a continuance was affirmed. He filed his motion nine days before his scheduled hearing, and it was his third request for a continuance in less than two months. Further, the trial court had warned him when it granted his last continuance that it would not honor any more requests for a continuance.***