

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 11, 2020

**108521** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE ADOPTION OF A.K.

**108522** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE ADOPTION OF C.K.

Reversed and remanded.

Raymond C. Headen, J., and Patricia Ann Blackmon, J., concur; Eileen T. Gallagher, A.J., dissents with separate opinion.

**KEY WORDS:** *Adoption; R.C. 3107.07; law of the case; intervening factor; failure to contact; failure to support; justifiable cause.*

**A parent's compliance with a valid court order, including a no-contact order, constitutes justifiable cause for failure to contact their children for the purposes of R.C. 3107.07.**

**108595** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO  
MIDLAND FUNDING LLC v NATHAN CHERRIER

Reversed and remanded.

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

**KEY WORDS:** *Service of process; motion to vacate; motion for relief from judgment; void judgment; refused; unclaimed; service by ordinary mail; presumption of service; commencement of civil action; personal jurisdiction; insufficiency of process; insufficiency of service of process; Civ.R. 4.6(D); Civ.R. 3(A); Civ.R. 4(E); Civ.R. 12(B)(2); Civ.R. 12(B)(4); Civ.R. 12(B)(5).*

**Trial court erred in failing to vacate default judgment where the judgment was void since plaintiff never obtained proper service on the defendant. Trial court also erred in denying defendant's motion to dismiss the complaint for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process under Civ.R. 12(B)(2), 12(B)(4), and 12(B)(5) since the trial court never obtained personal jurisdiction over the defendant due to lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process.**

## CASE DECISION LIST

**108670** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
HUNTINGTON NATIONAL BANK v HALLE REX, ET AL.

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

**KEY WORDS:** *Civ.R. 24/motion to intervene; R.C. 5301.252/affidavit on facts relating to title; R.C. 5301.23 and .25/timeliness of filing and conveyance of lien; foreclosure; R.C. 2703.26/doctrine of lis pendens; lien; continuing jurisdiction.*

*Appellant received a restraining order against appellant's former spouse pertaining to a piece of property to which both parties had an interest. Appellant failed to file the trial court's order pursuant to R.C. 5301.252, 5301.23, and 5301.25 that would have created for appellant a priority lien against the property thereby giving appellant a right of interest to intervene in the foreclosure proceeding; the trial court's restraining order issued during the divorce proceedings did not meet the criteria of R.C. 2329.02 for a judgment lien. The trial court did not err where it denied appellant's motion to intervene.*

*The parties' divorce was not pending at the time of the foreclosure action; the doctrine of lis pendens does not apply.*

**108702** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JEWAN KYLE

Affirmed.

Eileen T. Gallagher, A.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Having weapons while under disability; possession; constructive; actual; self-defense; sufficient; manifest weight; credible; conviction; jury instruction; plain error.*

*Defendant's having weapons while under disability conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. The state presented credible evidence that the defendant possessed a firearm while under disability prior to using the firearm in self-defense.*

**108707** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GREGORY WATTS

## CASE DECISION LIST

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Complicity; R.C. 2903.02; aiding and abetting; aggravated murder; R.C. 2903.01(B); murder; R.C. 2903.02(A) and (B); aggravated burglary; R.C. 2911.11(A)(1); felonious assault; R.C. 2903.11(A)(1); kidnapping; R.C. 2905.01(A)(3); sufficiency and manifest weight of the evidence; allied offenses; effective assistance of counsel.*

*Defendant's convictions were affirmed because the state presented sufficient circumstantial evidence to prove beyond a reasonable doubt that defendant was complicit in the crimes against the victim and the trier of fact did not clearly lose its weight when it found defendant guilty. Thus, defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Further, there was no error when the trial court did not merge defendant's aggravated murder and kidnapping convictions because the evidence showed that the restraint of the victim was prolonged such that there was a separate animus for kidnapping and aggravated murder and thus, counsel was not ineffective for failing to object to the trial court's merger analysis.*

**108719** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
LAUREL K. YOUNG, ET AL. v JOSH S. KAUFMAN, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., P.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Will; estate plan; will contest; directed verdict; confidential relationship; undue influence; evidence; abuse of discretion; relevance; hearsay; Evid.R. 801; Evid.R. 802; Evid.R. 803.*

*The trial court did not err or abuse its discretion in excluding the declarant's statements that appellants attempted to introduce at trial to challenge the validity of the declarant's estate plan.*

**108746** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v YANIQUE WATSON

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *R.C. 2919.25(A); Cleveland Codified Ordinances 621.08(a).*

## CASE DECISION LIST

(Case 108746 continued)

**The city presented sufficient evidence to prove beyond a reasonable doubt that the defendant committed domestic violence but it did not present sufficient evidence of unlawful restraint.**

**108888** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ROYSTON PHILLIPS v VESUVIUS USA CORPORATION

Affirmed in part, modified in part, and remanded.

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

**KEY WORDS:** *Civ.R. 26; discovery; compel; privileged; provisional remedy; final appealable order; R.C. 2505.02(B)(4); European Union; General Data Protection Regulation.*

***Trial court's order granting motion to compel of potentially privileged or confidential documents was a provisional remedy under R.C. 2505.02 and thus, subject to immediate appeal. Assuming the European Union's General Data Production Regulation applies to the personnel files of European citizens, the factors to be considered weigh in favor of production. However, the trial court should have conducted an in camera inspection of the documents requested and redacted those documents deemed irrelevant or confidential.***

**108919** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v DWAYNE BROOKS

Affirmed.

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

**KEY WORDS:** *Void versus voidable sentence; R.C. 2929.03(C)(2).*

***Brooks's sentence of "life, without the possibility of parole until serving twenty (20) years" instead of twenty "full" years is voidable, not void, and his appeal barred by res judicata and untimeliness for petition for postconviction relief.***

**108926** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
BRIAN F. BARAGA v KORRI A. MCCORMICK (F.K.A. BARAGA)

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Mary Eileen Kilbane, J., concur.

## **CASE DECISION LIST**

(Case 108926 continued)

**KEY WORDS: Modification of child support; objections to magistrate's decision; abuse of discretion.**

**Appellant's income was determined by competent, credible evidence. The trial court did not abuse its discretion where it adopted the magistrate's decision.**