

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 1, 2021

**107030** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MADORA JONES, ADMIN. OF THE ESTATE OF REDON JONES v  
THE CLEVELAND CLINIC FOUNDATION, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Motion to compel; discovery; court's failure to rule on motion is presumed to be denial; prejudice; invited error; motion in limine; interlocutory; exclusion of evidence; deposition testimony; preserved error; proffer; waiver of error; manifest weight of the evidence; expert testimony; conflicting opinions; competent, credible evidence.*

*The trial court's denial of appellant's motion to compel was proper. By failing to comply with the proper procedure for discovery disputes, appellant invited any error and prejudice resulting from the denial. Further, any error arising from the court's ruling on appellees' motion in limine was waived because appellant never proffered the subject deposition testimony nor even sought to introduce any of the deposition testimony at the appropriate time during the trial. The jury's verdict was not against the manifest weight of the evidence. The jury was presented with conflicting expert opinions regarding the standard of care and evidently found that appellees and their expert were more credible.*

**108996** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TYSEAN MARTIN

Affirmed.

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

**KEY WORDS:** *Mandatory bindover; proximate cause; involuntary manslaughter; R.C. 2152.10.*

*The juvenile court did not err in granting the state's motion for mandatory bindover because there was probable cause that the appellant committed involuntary manslaughter, because his actions were the proximate cause of the death of the victim. The state provided sufficient evidence that the gun seen in the appellant's hand was operable. The appellant failed to demonstrate that R.C. 2152.10 and 2152.12 are unconstitutional.*

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**109377** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STAFFORD LAW CO., LPA v ESTATE OF RUBY J. COLEMAN, ET AL.

Reversed and remanded.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, concur.

**KEY WORDS:** *Summary judgment; estate; administrator; claim; presentment; R.C. 2117.06; Wilson v. Lawrence; res judicata; jurisdiction.*

*R.C. 2117.06 requires that a claim against an estate be presented directly to the executor or administrator of the estate. Therefore, defendant-appellee's claim was not properly presented where it was addressed to the administrator's attorney. The trial court erred in granting summary judgment in favor of the defendant-appellee where its decision relied on an improper statement by the probate court and a misinterpretation of Ohio Supreme Court's decision in Wilson v. Lawrence. The appellant's claims were not barred by res judicata because the probate court's earlier finding that the claim was properly presented was a nullity where the probate court did not have jurisdiction over the rejected claim.*

**109392** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STEVEN STAKICH, ET AL. v NANCY MARGARET RUSSO, ET AL.

Gene Donofrio, J., Cheryl L. Waite, J., and Carol Ann Robb, J., concur.\*  
(\*Sitting by assignment. Judges of the Seventh District Court of Appeals.)

**KEY WORDS:** *Summary judgment; malicious prosecution; intentional infliction of emotional distress; law-of-the-case doctrine; no genuine issue of material fact to preclude summary judgment.*

**109472** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MANG HUNG WONG, ET AL. v CCH DEVELOPMENT CORPORATION

Affirmed.

Larry A. Jones, Sr., J., Mary J. Boyle, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Civ.R. 12(B)(6)/motion to dismiss; contract; mutual mistake.*

*Appellants failed to show that the alleged mistake was a mutual mistake. Rather the mistake was between appellants and their counsel. Appellants failed to state a claim for which relief could be granted. There was no error where the trial court dismissed appellants' complaint.*

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**109489** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v WILLIE G. SEAWRIGHT, JR.

Affirmed.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Drug trafficking; drug possession; merger; allied offenses of similar import; R.C. 2941.25; fentanyl; fentanyl-related compounds; plain error; consecutive sentences; R.C. 2929.14(C)(4); ineffective assistance of counsel; mandatory fine; affidavit of indigency; R.C. 2929.18(B)(1).*

*Defendant's drug trafficking offenses were not allied offenses of similar import where each count related to a different substance, some of the drugs were packaged separately, and some of the drugs were classified separately. The imposition of consecutive sentences was not error where the trial court made the required findings on the record and we cannot clearly and convincingly find that the record does not support the findings. Trial counsel was not ineffective for failing to file an affidavit of indigency prior to sentencing related to a mandatory fine where the court proceeded directly to sentencing, and the record does not reflect a reasonable probability that had an affidavit been filed, the court would have made a determination that the defendant was indigent for purposes of the mandatory fine.*

**109513** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v YAZAN SABIH

Affirmed.

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

**KEY WORDS:** *Ineffective assistance of counsel; sentencing; attack; motive; revenge; disproportionate sentence.*

*Trial counsel was not ineffective for not objecting at sentencing to the victim's testimony that the motive for defendant's attack on him was revenge where defendant told the court his motive was retaliation; defense counsel was not ineffective for not objecting to the codefendant's lesser sentence as disproportionate to the defendant's lengthy sentence because nothing in the record suggested that counsel was aware of the codefendant's sentence when defendant was sentenced.*

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**109514** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SAQUONA M. MACK

Affirmed.

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

**KEY WORDS:** *Sufficiency; manifest weight; R.C. 2903.13(B) and R.C. 2903.13(C)(4)(a)/assault; R.C. 2901.22/recklessness.*

**Body cam video and witness testimony were sufficient to sustain appellant's conviction for assault. Appellant's conviction was not against the manifest weight of the evidence.**

**109520** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
VILLAGE OF BRATENAHL v CHRISTIN ELDRIDGE

Affirmed and remanded.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Jail-time credit; misdemeanor; sentence.*

**This case centers around the trial court's failure to calculate jail-time credit for a misdemeanor case. Because the court did not calculate jail-time credit, appellant's assignment of error is sustained and the case is remanded.**

**109534** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JUDY ADKINS, ADMIN. OF ESTATE OF ERNESTINE ADKINS v  
WOMEN'S WELSH CLUB OF AMERICA, ET AL.

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Abuse of discretion; motion for an extension of time; expert report; summary judgment.*

**The trial court did not abuse its discretion in denying the appellant's motion for an extension of time to file an expert report or her opposition brief, because the appellant did not demonstrate a good cause showing for the late filing. The trial court did not err in granting the appellees' motions for summary judgment because the trial court correctly ruled that there remained no material issues of fact.**

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**109580** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v OSIRIS ALI

Affirmed.

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

**KEY WORDS:** *R.C. 2953.21-23, postconviction relief, timeliness, voidable sentence, R.C. 2907.02(A)(2), rape by force, R.C. 2907.04(B)(3), unlawful sexual conduct.*

*The sentencing court had jurisdiction over appellant and over the case. Appellant's sentence was voidable and challengeable only via direct appeal. The motion to vacate sentence is successive and untimely.*

**109696** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v PROTERRA, INC.

Reversed and remanded.

Michelle J. Sheehan, J., Mary J. Boyle, A.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Zoning code violation; community control violation; notice.*

*The housing court's decision finding appellant in violation of its community control is reversed because the record shows appellant, who operates a dirt processing site without a certificate of occupancy and was found guilty of violating the zoning code, was never on notice that the terms of its community control required it to remove the dirt from the site on a certain schedule or by a certain deadline. As such, there is no proof, substantial or otherwise, that appellant violated the terms of its community control.*

**109709** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAVID ARMSTRONG

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Burglary; sufficiency of evidence; manifest weight of the evidence; force; trespass; occupied structure; purpose to commit a criminal offense.*

*Appellant's burglary conviction was supported by sufficient*

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(Case 109709 continued)

**evidence and was not against the manifest weight of the evidence where the state's evidence demonstrated that appellant trespassed in his ex-girlfriend's home with a purpose to vandalize it.**

**109753** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN E. KOBAL v EDWARD JONES SECURITIES, ET AL.

Affirmed.

Mary J. Boyle, A.J., Larry A. Jones, Sr., J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Civ.R. 12(C); judgment on the pleadings, failure to state a claim upon which relief could be granted; res judicata; statute of limitations; discovery; sua sponte dismissal of claims; waiver; fraud.*

***The trial court did not err in dismissing all of appellant's claims. His claims were either invalid, barred by res judicata, and/or were time barred. Appellant failed to allege fraud with particularity. The trial court did not err in dismissing appellant's claims before discovery or in dismissing his claims against a defendant who failed to respond to the complaint. Appellant waived his argument about abuse of process because he raised it for the first time on appeal.***

**109758** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DEMARKES T. PATE

Affirmed.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *R.C. 2929.11; R.C. 2929.12; maximum sentence.*

***Because the record demonstrated that the trial judge considered the purposes and principles of sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, and the defendant failed to demonstrate that the record clearly and convincingly did not support his maximum sentence, or that the sentence was contrary to law, the sentence was affirmed.***

**109950** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DONELL PARKER

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Affirmed.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., Eileen T. Gallagher, J., concur

**KEY WORDS:** *Trial; conviction; sentence; direct appeal; res judicata; indictment; defective.*

**Whether an indictment was defective was an issue that could have been raised on direct appeal. Parker did not challenge the sufficiency of the indictment at trial or on direct appeal and, therefore, res judicata barred his attempt to raise the issue of a defective indictment many years after his convictions.**

<b>110016</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE S.B., ET AL.			

<b>110017</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.B.			

Affirmed.

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

**KEY WORDS:** *Parental rights; R.C. 2151.414(B)(1)(a)-(e)/clear and convincing evidence; R.C. 2151.414(D)/best interest of the child; findings; abuse of discretion.*

**The trial court made specific findings as to the issue of a safe and stable home for each child and there was credible, competent evidence to support the trial court's best-interest findings. The trial court did not abuse its discretion where it granted the agency's motion for permanent custody.**

<b>110057</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RAYSHAWN OGLETREE			

Dismissed.

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

**KEY WORDS:** *Motion for relief from judgment; surety; bond; jurisdiction; final appealable order.*

**Defendant's notice of appeal from the trial court's denial of his motion to release surety from obligation divested the trial court of jurisdiction to consider his motion for relief from judgment.**