

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 8, 2021

**109221** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TATIA SMITH

Affirmed.

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

**KEY WORDS:** *Aggravated murder; prior calculation and design; sufficiency of the evidence; weight of the evidence; self-defense.*

*Sufficient evidence of prior calculation and design in the murdering of the victim was presented at trial and the trial court sitting as the trier of fact did not lose its way in concluding beyond a reasonable doubt that the state disproved self-defense.*

**109327** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GARY TIPTON

Affirmed.

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

**KEY WORDS:** *Consecutive sentences; R.C. 2929.14; contrary to law; R.C. 2953.08.*

*The trial court did not err in imposing consecutive sentences. The trial court made the requisite findings in imposing consecutive sentences, incorporated the findings into the sentencing journal entry, and the trial court's findings are clearly and convincingly supported by the record.*

**109473** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TERRENCE RATLIFF

Vacated and remanded.

Mary J. Boyle, A.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Void vs. voidable sentence; res judicata; postconviction motion.*

*The trial court lacked jurisdiction to correct Ratliff's sentencing error because the error rendered Ratliff's sentence voidable, not void, and he could not challenge it through a postconviction motion.*

## CASE DECISION LIST

**109516** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ANDREA PARRA, INDIVIDUALLY AND AS ADMINISTRATOR v FRANK G. JACKSON, ET AL.

Affirmed.

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

**KEY WORDS:** *Civ.R.12(B)(6) motion to dismiss; immunity of political subdivision employee; R.C. 2744.03(A)(6).*

*The trial court's judgment denying the police chief's motion to dismiss based on his claim of immunity as a political subdivision employee is affirmed. Presuming all the factual allegations to be true and making all reasonable inferences in plaintiff's favor, we cannot conclude that plaintiff could prove no set of facts to show the police chief acted with malicious purpose, in bad faith, or in a wanton or reckless manner.*

**109559** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SIMON MONTGOMERY v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ET AL

Affirmed.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Civ.R. 56/summary judgment; defamation.*

*The statements made by appellee during a background check for appellant were neither untruthful nor defamatory against appellant. The trial court did not err where it granted appellees' motions for summary judgment.*

**109627** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE AUTO PROPERTY & CASUALTY INS. CO., ET AL. v ABCO FIRE PROTECTION, INC.

Affirmed.

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

**KEY WORDS:** *Motion for new trial; Civ.R. 59; subrogation; expert report; Loc.R. 21.1; weight of the evidence; breach of contract; negligence.*

*The jury's damages award was not against the weight of the evidence and in light of the fact that the jury found the defendant liable, there can be no error with the trial court's decision to preclude the plaintiffs from supplementing their experts' reports two weeks before trial to include an additional basis for liability.*

## CASE DECISION LIST

**109632** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
AJZ'S HAULING, LLC v TRUNORTH WARRANTY PROGRAMS OF NORTH AMERICA

Affirmed.

Anita Laster Mays, P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Motion to stay; motion to compel arbitration; arbitration agreement; motion to dismiss; jurisdiction; venue; forum selection clause; res judicata; final appealable order; R.C. 2711.02; hearing; R.C. 2711.03; unconscionability; procedural unconscionability; substantive unconscionability.*

*The trial court did not err denying appellant's motion to stay proceedings and compel arbitration, or alternatively to dismiss for lack of personal jurisdiction, subject matter jurisdiction, and improper venue. The arbitration agreement in this case is both procedurally and substantively unconscionable. Enforcement of the forum selection provision would be unreasonable and unjust, and effectively deny appellee its day in court. Based on the totality of the circumstances in this case, the trial court's failure to hold an evidentiary hearing on appellant's motion to stay and compel arbitration was not reversible error. Res judicata did not bar appellee from challenging the enforceability of the arbitration agreement in the second civil action.*

**109642** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ALI JABBAR

Affirmed.

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

**KEY WORDS:** *Unlawful sexual conduct with a minor; R.C. 2907.04; motion to dismiss; preindictment delay; actual prejudice; guilty plea; waiver.*

*The trial court did not err in denying appellant's motion to dismiss for preindictment delay. Appellant failed to meet his burden of demonstrating actual prejudice resulting from the delay in prosecution.*

**109643** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHARZELLE GOODEN

## CASE DECISION LIST

Affirmed.

Mary J. Boyle, A.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Crim.R. 11; voluntary, knowing, and intelligent guilty plea; Crim.R. 11(C)(2)(a); maximum penalty involved; R.C. 2929.14(B)(1)(g); R.C. 2929.14(C)(1)(a); consecutive prison terms for firearm specifications; calculation of aggregate prison sentence.*

*The trial court complied with Crim.R. 11. The trial court correctly informed Gooden that the firearm specifications must run consecutively, and it had no obligation to inform Gooden of the maximum aggregate sentence he faced. Gooden also failed to demonstrate that the trial court's alleged mistakes prejudiced him.*

<b>109665</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAMES A. GLOECKNER			

Affirmed.

Lisa B. Forbes, J., Mary J. Boyle, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Motion to withdraw guilty plea; abuse of discretion.*

*The trial court did not abuse its discretion by denying the defendant's motion to withdraw his guilty plea.*

<b>109733</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LAMAR SPEIGHTS			

Affirmed.

Eileen A. Gallagher, J., Mary J. Boyle, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Restitution; R.C. 2929.18(A)(1); Crim.R. 52(B); plain error; insurance proceeds.*

*Trial court did not commit plain error in ordering defendant to pay restitution arising out of ATM "smash and grabs." Defense counsel did not object to restitution amount at sentencing hearing and stated that defendant agreed to restitution amount at the conclusion of sentencing hearing. Amount of restitution ordered was supported by documentation that included invoices, repair estimates, portions of police reports, correspondence from the victims and photographs detailing the damages and losses sustained by each of the victims. Trial court's failure to consider potential insurance proceeds received by the victims was not plain error where nothing in the record affirmatively demonstrated that restitution was imposed for any amount already recovered through insurance proceeds.*

## CASE DECISION LIST

**109829** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
HARRY E. FIGGIE IV, ET AL. v BETSY FIGGIE, ET AL.

Affirmed.

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

**KEY WORDS:** *Civ.R. 12(B)(6); motion to dismiss; constructive trust; independent cause of action; unjust enrichment; statute of limitations; R.C. 2305.07; discovery rule; fraud; Civ.R. 9(B); pleading with particularity; tortious interference with expectancy of inheritance.*

*Probate court did not err in dismissing appellants' complaint pursuant to Civ.R. 12(B)(6). Probate court did not err in dismissing appellants' constructive trust claim because constructive trust is not an independent cause of action. Probate court properly concluded that unjust enrichment claim was time-barred where complaint was filed more than 17 years after stock redemption that served as the basis for appellants' unjust enrichment claim occurred. Probate court did not err in dismissing appellants' fraud claim pursuant to Civ.R. 9(B) and 12(B)(6) because complaint lacked allegations of essential elements of fraud claim. Appellants' complaint did not state a claim for tortious interference with expectancy of inheritance where the alleged tortious interference occurred after appellants had already realized their inheritance, as expected.*

**109956** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE B.M.

Affirmed.

Anita Laster Mays, P.J., Lisa B. Forbes, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Permanent custody, R.C. 2151.414, best interest of the child, manifest weight of the evidence.*

*The record demonstrates by clear and convincing evidence that the award of permanent custody to the agency is in the best interest of the child.*

**110028** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE AR.S., ET AL.

Reversed.

Emanuella D. Groves, J., and Anita Laster Mays, P.J., concur; Eileen A. Gallagher, J., dissents with separate opinion.

***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 juvenile court failed to establish by clear and convincing evidence that placement of the children in the aunt's home was not in their best interest. As a result, we find the trial court abused its discretion by granting CCDCFS' motion for permanent custody.***