

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 8

December 9, 2021

**109584** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
KERTES ENTERPRISES LLC v STEVE SANDERS, ET AL.

Affirmed.

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

**KEY WORDS:** *Real estate purchase agreement; agreement to agree; formation of contract; essential terms and/or material terms; meeting of the minds; grant of summary judgment to nonmoving party; breach of contract.*

*The trial court granted appellee's motion for summary judgment and denied the appellant's motion for summary judgment, and the appellant appealed. Where parties sign a preliminary agreement that expressly calls for the execution of a subsequent agreement, a question arises as to whether a completely integrated contract exists.*

*When determining whether a complete integration exists, the trial court was permitted to all relevant evidence in order to make its determination. Similarly, the appellate court reviews de novo the existence of a contract.*

*On review, the appellate court, therefore, was permitted to examine all the evidence to determine whether an integrated contract was created. Where subsequent agreement contained essential terms of the contract, appellees were required to agree to its terms before contract formation could be found to have occurred. Therefore, the parties failed to come to a meeting of the minds when they could not agree to the terms of the subsequent agreement. Even though this court disagrees with the trial court's finding that a contract existed, summary judgment was appropriate for appellees where appellant failed to establish the existence of contract.*

**110137** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
PETER SWORAK v GREAT LAKES RECREATIONAL VEHICLE ASSOCIATION, ET AL.

Affirmed.

Sean C. Gallagher, P.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Frivolous conduct; R.C. 2323.51; abuse of discretion.*

*The trial court did not abuse its discretion in denying a motion for sanctions filed under R.C. 2323.51 because there were colorable claims for relief advanced in the complaint.*

## CASE DECISION LIST

<b>110262</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
K&D MANAGEMENT, LLC v HALLE JONES			

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *Summary judgment; Civ.R. 56; residential lease; lease term; holdover tenancy; breach of contract; payment of utilities; Cleveland Codified Ordinances 375.05; security deposit; R.C. 5321.16(B) and (C); motion to compel discovery; motion for continuance to oppose summary judgment; motion to amend answer.*

*The residential tenant is liable for damages for the eleven days she remained in the apartment beyond the lease term. The landlord did not violate Cleveland Codified Ordinances 375.05 by charging the tenant for water and electricity. The landlord is liable for double damages pursuant to R.C. 5321.16(C) for failing to return the tenant's security deposit under one lease but properly withheld her second security deposit under a separate lease. The trial court did not abuse its discretion in denying the tenant's motions to compel discovery, for a continuance, and to amend her answer.*

<b>110342</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DERRICK BROWN			

<b>110498</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DERRICK BROWN			

<b>110499</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DERRICK BROWN			

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Rape; kidnapping; felonious assault; aggravated burglary; aggravated robbery; grand theft; 2953.08(D)(1); jointly recommended; agreed sentencing range; appeal; allied offenses; R.C. 2941.25; plain error; reasonable probability; dissimilar import; conduct; animus; harm.*

*Although there was an agreed sentence, because the plea agreement was silent on allied offenses, appellant was not precluded by R.C. 2953.08(D)(1) from raising an allied-offense challenge on appeal. Appellant failed to demonstrate any reasonable probability that his convictions are allied offenses of similar import. Because plain error was not shown, the judgments of the trial court were affirmed.*

## CASE DECISION LIST

**110388** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JANET GRAYSON

Affirmed.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Felonious assault; R.C. 2903.11(A)(1); R.C. 2903.11(A)(2); deadly weapon; self-defense; sufficiency of the evidence; manifest weight of the evidence; credibility.*

*The trial court did not err in finding that the defendant was not acting in self-defense where defendant was at fault in creating the situation giving rise to the affray in which force was used. Defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence.*

**110394** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE J.C.

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Serious youth offender; invocation of stayed sentence; R.C. 2152.14; ineffective assistance of counsel; public hearing; postrelease control.*

*The trial court did not err by invoking the serious youth offender dispositional sentence upon the appellant's commission of felony weapons charges while on parole from his indefinite term of custody at a Ohio Department of Youth Services facility, and the appellant failed to demonstrate any prejudice to satisfy the second prong of the ineffective assistance of counsel inquiry based on his attorney's conduct at the adult sentencing invocation hearing. Appellant's remaining claims regarding the right to a public hearing, proper imposition of postrelease control and challenges to the pleading requirement are also without merit.*

**110401** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO  
WALTER REED v DEPARTMENT OF PUBLIC SAFETY

Affirmed.

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

**KEY WORDS:** *KEY WORDS: Commercial driver's license; Public*

## CASE DECISION LIST

(Case 110401 continued)

**Utilities Commission of Ohio; Bureau of Motor Vehicles; Registrar of Motor Vehicles; R.C. 119.12; appeal of an administrative order; in accordance with the law; 49 C.F.R. 392.82(a)(1); use of handheld mobile telephone while operating a commercial motor vehicle; R.C. 4923.99; civil forfeiture; regulatory fine; R.C. 4511.33; Mich.Comp.Laws Ann. 257.642(1); marked lane statute; R.C. 4506.01(F); conviction; R.C. 4506.01(II); serious traffic violation; substantially similar; R.C. 4506.16(D); disqualification of commercial driver's license.**

**The Ohio Bureau of Motor Vehicles Registrar's decision to disqualify appellant's commercial driver's license for 60 days was in accordance with the law and is affirmed. Pursuant to R.C. 4506.16(D)(5)(a), the Registrar shall disqualify a commercial driver for 60 days upon conviction of two serious traffic violations that arise from separate incidents while driving a commercial motor vehicle and that occur within a three-year period. Appellant's December 2018 payment of a civil forfeiture to the Public Utilities Commission of Ohio for violation of 49 C.F.R. 392.82(a)(1), use of a handheld mobile telephone while operating a commercial motor vehicle, constituted a conviction under R.C. 4506.01(F) and the first of two serious traffic violations under R.C. 4506.01(II). Appellant's December 2018 citation for improper lane use in violation of Mich.Comp.Laws Ann. 257.642(1), Michigan's marked lane statute, is substantially similar to a violation of R.C. 4511.33, Ohio's marked lane statute, and constituted the second serious traffic violation under R.C. 4506.01(II).**

**110403** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DWAYNE D. PRYOR v DIRECTOR, OHIO DEPT. OF JOB & FAMILY SERVICES, ET AL.

Affirmed.

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

**KEY WORDS: *Unemployment benefits; just cause; quit.***

***The Ohio Unemployment Compensation Review Commission properly denied appellant's claim for unemployment benefits where the evidence showed that he quit his employment without just cause.***

**110470** ROCKY RIVER MUNI. G CIVIL MUNI. & CITY  
R. TODD BESCH v JOHN PHILLIP WILLIAMS, ET AL.

Affirmed.

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

## CASE DECISION LIST

(Case 110470 continued)

**KEY WORDS:** Civ.R. 56; denial of summary judgment; Civ.R. 36; request for admissions.

The trial court's grant of summary judgment was not in error. Appellant was not entitled to summary judgment based on the co-appellee's late response to requests for admissions where the record clearly evidences genuine issues of material fact, appellant did not provide clear proof of payment of the disputed amount, and appellee filed a response to the requests that may be deemed to be a withdrawal of the untimely submissions prior to the filing of the motion for summary judgment. The trial court further determined that appellant's subsequent trial testimony directly conflicted with the admissions and declared the requests withdrawn.

The purported failure of the trial court to address the request for admissions in the summary judgment entry advanced by appellant during oral argument was not presented in appellant's brief. Thus, a plain-error analysis does not apply.

**110490** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v HARRY BRISCOE

Affirmed.

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., J., and James A. Brogan, J.,\* concur.  
\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS:** *Motion for leave to file delayed motion for new trial; Crim.R. 33(B); unavoidably prevented from discovering new evidence; motion to retest fingerprint evidence; res judicata.*

*The trial court did not err by denying without an evidentiary hearing the defendant's motion for leave to file a delayed motion for a new trial because he did not clearly and convincingly demonstrate that he was unavoidably prevented from timely discovering the evidence on which he relied for his motion. The trial court also did not err by denying the defendant's motion to retest fingerprint evidence because he should have raised the issue in his direct appeal, he filed a previous postconviction petition on this basis, and his argument is barred by the doctrine of res judicata.*

**110524** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
GARRY KANTER v CITY OF CLEVELAND HEIGHTS AND CITY COUNCIL, ET AL.

Affirmed.

James A. Brogan, J.,\* Mary J. Boyle, A.J., and Frank D. Celebrezze, Jr., J., concur.  
\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

## CASE DECISION LIST

(Case 110524 continued)

**KEY WORDS:** Civ.R. 12(B)(6)/motion to dismiss; R.C. 121.22/Ohio's Open Meetings Act; public body; executive session.

Where the task force members were determined to be public officials, the city, under the permitted exception found in R.C. 121.22(G)(1), was permitted to discuss the addition of potential new members to the task force in executive session.

**110534** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: B.S.

**110535** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: A.S.

Affirmed.

Michelle J. Sheehan, J., Frank D. Celebrezze, Jr., P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Permanent custody; R.C. 2151.414, best interest of child, R.C. 2151.414(D); guardian ad litem recommendation; child's wishes in custody determination; appointment of counsel.*

*Even though the court did not have evidence of the best wishes of the children, the record reflects that the juvenile court considered the relevant statutory factors in determining the best interest of the children pursuant to R.C. 2151.414 and did not abuse its discretion in finding that permanent custody would be in the best interests of the children. There was sufficient evidence presented at the hearing to support the juvenile court's decision to grant permanent custody to CCDCFS. Further, under the circumstances of the case and where no evidence was presented that a conflict existed between the GAL's recommendation of permanent custody and the children's wishes, the juvenile court did not err by not appointing individual counsel for either or both of the children.*

**110621** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTHONY JACKSON

Vacated and remanded.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, A.J., and James A. Brogan, J.,\* concur.

\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals).

**KEY WORDS:** *Bond; bail; revocation; R.C. 2937.222; hearing; felonious assault; robbery; clear and convincing evidence; burden of proof; findings; standard of review; substantial risk; serious physical harm; conditions of release; abuse of discretion.*

## CASE DECISION LIST

(Case 110621 continued)

**The trial court erred in revoking appellant's bail and denying appellant's request for release. The state failed to meet its burden of proof under R.C. 2937.222(A). The trial court's findings under R.C. 2937.222(B) are not clearly supported by the record. The trial court's judgment revoking appellant's bond and denying appellant's request for release is vacated, and the matter is remanded to the trial court for the purpose of reinstating appellant's bond and ordering appellant's immediate release.**

**110624** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v OSIRIS ALI

Affirmed.

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

**KEY WORDS:** *Void; voidable; postconviction; sentence; jurisdiction; untimely.*

***Because the trial court lacked jurisdiction to consider the defendant's untimely and successive petition for postconviction relief, the court did not err by summarily denying the defendant's motion to correct his sentence.***

**110661** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: R.D.W., ET AL.

Affirmed.

Eileen T. Gallagher, J., and Michelle J. Sheehan, J., concur; Eileen A. Gallagher, P.J., concurs in judgment only.

**KEY WORDS:** *Permanent custody; substance abuse; anger management; parenting; best interest; remedy; case plan; abuse of discretion; termination; parental rights; clear and convincing evidence.*

***The juvenile court did not err by awarding permanent custody of the father's children to Cuyahoga County Division of Children and Family Services because the juvenile court properly engaged in the two-prong analysis prescribed by R.C. 2151.414 and clear and convincing evidence supported the court's decision granting permanent custody of the child to the agency.***

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 8 of 8

**110662** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: R.D.W., ET AL.

Affirmed.

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

**KEY WORDS:** *Best interest of the child; R.C. 2151.414; ineffective assistance of counsel.*

*The trial court did not err in determining that the two-year period of temporary custody could not be extended. Further, the trial court did not err in determining that the Mother had a chemical dependency so severe that she was unable to provide an adequate, permanent home. Finally, there was no evidence of any appropriate alternative placement for the children. As a result, Mother could not show that the trial court erred by granting permanent custody to the Agency or that the Mother's counsel was constitutionally ineffective.*

**110689** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: A.T.

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Permanent custody; manifest weight; App.R. 3; R.C. 2151.414; best interest; abuse of discretion; domestic violence.*

*The juvenile court abused its discretion in awarding permanent custody of the child to the Cuyahoga County Division of Children and Family Services. The juvenile court's decision terminating appellant's parental rights and awarding permanent custody of the child to the agency is not supported by clear and convincing evidence in the record.*

*Appellant either completed or had taken significant steps toward completing all of her case plan objectives. Appellant demonstrated her commitment toward the child and her willingness to provide an adequate permanent home for the child. Appellant participated in two parenting programs and demonstrated that she benefitted therefrom. There was no evidence of any contact between appellant and the child's father during the six months leading up to the permanent custody hearing, and appellant did not intend to speak to or remain involved with the child's father moving forward.*

*The record does not contain clear and convincing evidence that permanent custody is in the child's best interest at this time. Based on appellant's failure to file a combined notice of appeal pursuant to App.R. 3(D), this court does not have jurisdiction to review the juvenile court's custody decision regarding the child's younger brother.*