

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 4, 2021

**108677** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v ERNEST C. HARRIS

Dismissed.

Mary Eileen Kilbane, J., Larry A. Jones, Sr., P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Anders v. California; motion to withdraw; mootness; housing court; Cleveland Codified Ordinances 3103.25; community control violation; collateral consequences.*

*Appellant challenges a decision finding him in violation of his community control sanctions following a conviction for housing code violations. Although the record raises questions as to whether appellant should have been charged with housing code violations at all, he has served his sentence for violating the terms of his community control. Because the appellant has served his sentence and has presented no evidence of collateral consequences, his appeal is dismissed as moot. Appellate counsel's motions to withdraw pursuant to Anders v. California are also moot.*

**109121** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
KAREN MICHAEL (F.K.A. MILLER) v DAVID MILLER, ET AL.

Affirmed.

Anita Laster Mays, J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, P.J., concurs in part and dissents in part with separate opinion.

**KEY WORDS:** *Spousal support, R.C. 3105.18, additional support, secured lien, R.C. 3105.171, equitable lien, corporate shares, separation agreement, contract interpretation, integrated agreement.*

*In the direct appeal, the trial court correctly determined that the plain language of the separation agreement reflects the intent of the parties to encumber husband's stock with a secured lien of future support and equitable lien over current and future support. An equitable lien does not grant possession.*

*Cross-appellant waived the issue of current ownership of the secured stock on appeal by failing to argue it in the trial court below.*

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**109226** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v JUSTIN H. IMRIE

Affirmed.

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

**KEY WORDS:** *Sufficient evidence, manifest weight of the evidence, voyeurism, criminal trespass, and invasion of privacy.*

*The evidence was sufficient to prove that the appellant committed voyeurism when he placed his cellphone under the victim's restroom stall and recorded her. His conviction was not against the manifest weight of the evidence because, in reviewing the evidence in the light most favorable to the state, it was clear that the trial court did not lose its way or create a manifest miscarriage of justice in finding the appellant guilty. In addition, the state was not required to prove that the appellant committed criminal trespass, only that he invaded the privacy of the victim.*

**109236** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
SW ACQUISITION CO., INC. v AKZO NOBEL PAINTS, LLC., ET AL.

Reversed and remanded.

Eileen T. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Arbitration; summary judgment; standing; judicial estoppel; compel; jurisdiction; contract; scope of arbitration; claim; petition.*

*The trial court erred by granting summary judgment in favor of the defendant. The trial court exceeded the scope of the discretion afforded to it under R.C. 2711.03 by looking through the petition to compel arbitration to prematurely review the procedural or factual deficiencies of the petitioner's potential claims.*

**109265** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LA'SHA BATTLES

Affirmed.

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

**KEY WORDS:** *Felonious assault; aggravated menacing; serious physical harm; R.C. 2901.01(A)(5); concussion; unconscious; sufficient evidence; manifest weight; complicity; R.C. 2923.03(A);*

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(Case 109265 continued)

**conspiracy; jury instruction; plain error; Crim.R. 52(B).**

**Affirmed convictions for felonious assault and aggravated menacing. The state presented sufficient evidence to establish serious physical harm where the victim was struck by appellant's accomplice, lost consciousness, sought medical treatment, was diagnosed with a concussion, and was still feeling the effects of the concussion at the time of trial. The convictions were not against the manifest weight of the evidence. No plain error occurred by giving a jury instruction on conspiracy.**

<b>109368</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID A. WILKINS			

Affirmed and remanded.

Eileen A. Gallagher, J., and Frank D. Celebreeze, Jr., J., concur; Mary J. Boyle, A.J., concurs in judgment only.

***KEY WORDS: Resentencing hearing; R.C. 2929.14(C)(4); consecutive sentence findings; incorporation into sentencing journal entry; identical language; nunc pro tunc order.***

***Although the trial court must incorporate the consecutive sentence findings it made at the sentencing hearing into its sentencing journal entry, it is not required, when doing so, to use the identical language it used when making those findings at the sentencing hearing.***

***Trial court made all of the requisite findings to support the imposition of consecutive sentences under R.C. 2929.14(C)(4) at the resentencing hearing but did not incorporate all of its consecutive sentence findings into its sentencing journal entry. Consecutive sentences affirmed but case remanded for the trial court to issue a nunc pro tunc order incorporating all of the consecutive sentence findings it made at the resentencing hearing into its sentencing journal entry.***

<b>109403</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
L.J. v M.P.			

Affirmed.

Michelle J. Sheehan, J., and Larry A. Jones, Sr., P.J., concur; Eileen A. Gallagher, J., dissents (with separate opinion attached).

***KEY WORDS: R.C. 2903.214.***

***Testimony by petitioner that respondent engaged in conduct over***

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(Case 109403 continued)

**two occasions that consisted of aggressive, nonverbal threats and of direct threats is competent, credible evidence that supports a trial court's grant of a criminal stalking protection order.**

**109406** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v JENNIFER GATENS

Reversed and remanded.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS: *Crim.R. 48; dismissal.***

***A dismissal by the municipal court of a refiled OVI charge without findings of fact and reasons for the dismissal pursuant to Crim.R. 48 requires reversal of the dismissal.***

**109545** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE C.M.C

**109546** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE B.M.

Affirmed.

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

**KEY WORDS: *Legal custody; magistrate; notice; electronic mail; objection; jurisdiction; divested; notice of appeal; ineffective assistance of counsel.***

***Counsel for the appellants was provided adequate notice of the magistrate's decision via electronic mail. The trial court was divested of jurisdiction to address the pending motion for relief from judgment upon the filing of the instant notice of appeal. The constitutional guarantee of effective assistance of counsel extends to criminal and permanent custody proceedings.***

**109565** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
VILLAGE OF CUYAHOGA HEIGHTS v RAM SUPPLY CHAIN, LLC

**109566** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
VILLAGE OF CUYAHOGA HEIGHTS v JJM INVESTMENTS, LLC

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Affirmed.

Eileen T. Gallagher, P.J., and Larry A. Jones, Sr., J., concur; Mary Eileen Kilbane, J., dissents with separate attached opinion.

**KEY WORDS:** *Magistrate's decision; objections to magistrate's decision; service; Civ.R. 53(D)(3)(a)(iii).*

*The trial court properly adopted the magistrate's decision and entered an independent judgment finding that the appropriation of defendant's property was necessary and served a legitimate public purpose.*

*The magistrate's decision was supported by competent, credible evidence.*

*Trial court's denial of an untimely motion for extension of time to file objections to the magistrate's decision was affirmed where the moving party failed to demonstrate good cause for its failure to file timely objections or a timely motion for extension of time.*

**109569** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
PATRICK O. STOKES v OHIO DEPT. OF REHABILITATION & CORRECTIONS, ET AL.

Affirmed.

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

**KEY WORDS:** *Motion to dismiss; R.C. 2721.03/declaratory judgment.*

*A declaratory judgment action was not the proper venue to address appellant's challenges. There was no abuse of discretion where the trial court granted appellees' motion to dismiss.*

**109697** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JIHADI YAFEAR

Affirmed.

Kathleen Ann Keough, P.J., Lisa B. Forbes, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Menacing by stalking; allied offenses; plain error; different victims; same family.*

*Trial court's failure to merge as allied offenses counts that charged menacing by stalking against separate victims of the same family was not plain error because each count named a separate victim, and thus there was a separate animus against each victim; and because each victim suffered separate, identifiable harm, there was a dissimilar import for each victim.*