

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 28, 2021

**108868** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v WANDA YOUNG

Affirmed.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Not guilty by reason of insanity; Reagan Tokes Act; plain error.*

*The state failed to establish that the trial court committed plain error when it committed the defendant to hospitalization for up to a maximum of 11 years, without the tail provided by the Reagan Tokes Law, after the defendant was found not guilty by reason of insanity.*

**109023** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHAEL STANSELL

Vacated and remanded.

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

**KEY WORDS:** *Motion to vacate; sexual predator; sexually violent predator specifications; res judicata; unlawful sentence; R.C. 2971.01(H).*

*Appellant's life-tail sentence was unlawful; therefore, appellant's appeal is not prohibited based on the doctrine of res judicata.*

*The amendment to R.C. Chapter 2971 has no retroactive effect on appellant. It was error where the trial court denied appellant's motion to vacate sentencing on the sexually violent predator specifications.*

**109181** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMES HOLLOWAY

Affirmed.

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

**KEY WORDS:** *Sexual predator; clear and convincing evidence; Megan's Law; manifest weight of the evidence; Eppinger.*

*The trial court made an adequate record for reviewing the trial*

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(Case 109181 continued)

**court's determination that the defendant was a sexual predator under Megan's Law.**

**The trial court made the statutory findings necessary to classify the defendant as a sexual predator and those findings were supported by clear and convincing evidence.**

**109233** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DAVID H. LAM v CITY OF CLEVELAND

Affirmed.

Larry A. Jones, Sr., J., and Eileen T. Gallagher, P.J., concur; Mary Eileen Kilbane, J., concurs in part and dissents in part with separate concurring and dissenting opinion.

**KEY WORDS: Cleveland Codified Ordinances 171.57; collective bargaining; R.C. 5923.05/military leave pay; USERRA; home-rule analysis; self-government; res judicata.**

***The trial court did not err in granting appellee's motion for summary judgment. Appellee's Cleveland Codified Ordinances 171.57 does not operate as an exercise of military power but rather to provide benefits to its employees while on military leave; appellant failed to show that under USERRA he was denied a benefit he was entitled to; appellant provided no case evidence to support his claim that R.C. 5923.05 was enacted by the General Assembly; the trial court's home-rule analysis was proper - the Cleveland Codified Ordinances 171.57 is an exercise of local self-government; and appellant's attempt to relitigate claims previously litigated in federal court are barred by the doctrine of res judicata.***

**109287** CLEVELAND HTS. MUNI. G CIVIL MUNI. & CITY  
DONTAE THOMAS v TIANA MURRY, ET AL.

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS: Frivolous; conduct; malicious; malice; willingly; bad faith; evidence; motion; deposition; abuse of discretion; sanction; attorney fees.**

***The trial court did not abuse its discretion by admitting the affidavit of a witness who did not testify in person during the sanctions hearing. The trial court did not abuse its discretion by denying the defendants' motion for attorney fees and sanctions under Civ.R. 11. The trial court did not abuse its discretion by determining that the claims of defamation, malicious prosecution, civil trespass, and malicious damage of property were not frivolously filed.***

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(Case 109287 continued)

**However, the trial court abused its discretion by determining that the aiding and abetting malicious prosecution claim was warranted under existing law.**

**109366** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v JAMAL DYE

Affirmed.

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

**KEY WORDS: Postconviction relief; untimely; ineffective assistance of counsel; conflict of interest; eyewitness; amended petition; abuse of discretion.**

***Appellant filed a timely petition for postconviction relief with four claims then filed an amended petition for postconviction relief with a fifth claim. The trial court denied his petition as untimely and did not have a hearing. Despite that the court gave a full and fair hearing to each of the appellant's claims.***

***The appellant submitted affidavits of additional eyewitness testimony that he argues shows he did not commit the murder he was convicted of. He argues that his counsel was ineffective for failing to present these witnesses. We found that the eyewitness's testimony was not credible.***

***At trial, the state presented evidence that the appellant was familiar with guns, through photos and evidence that guns were found in his room. Appellant now presents affidavit testimony that he argues would have eliminated the prejudicial effect of the state's evidence. However, we do not find that counsel's failure to present the evidence was prejudicial because the jury did not believe the appellant's self-defense argument.***

***Finally, appellant presented affidavit testimony that his attorney had a conflict of interest. We did not find a conflict of interest.***

***Accordingly, we did not find that the trial court abused its discretion.***

**109414** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN J. SCOTT v SARCHIONE FORD

Affirmed.

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

## CASE DECISION LIST

(Case 109414 continued)

**KEY WORDS:** Summary judgment; vehicle; Ohio Consumer Sales Practices Act; CSPA; misrepresentation; breach of warranty; discrimination; R.C. 1345.02(A); R.C. 1345.03(A); R.C. 4112.021(B)(1)(a); financing; loan; interest rate; buy rate; customer rate; lowest rate; limited warranty.

Summary judgment in favor of defendant-appellee car dealership was upheld on claims of violation of the Ohio Consumer Sales Practices Act, misrepresentation, breach of warranty, and discrimination. Dealership, which offered to help appellant obtain financing “at the best and lowest rate available” for a pre-owned vehicle, had no duty to disclose its financing arrangement with the lender or the buy rate for a loan, and there was no evidence of an unfair or deceptive act, an unconscionable act or practice, or any misrepresentation with regard to the financing. The limited warranty, which covered “the engine and transmission only,” did not cover the air conditioning compressor under the plain and ordinary meaning of the terms. There was no evidence of discrimination.

**109592** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v D'ERISE MARCEL CARSON

Dismissed.

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

**KEY WORDS:** *Motion to withdraw; dismissed; Anders.*

*Counsel's motion to withdraw granted and appeal dismissed pursuant to Anders where an appeal would be wholly frivolous.*

**109634** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v TERRANCE MITCHELL

Affirmed.

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

**KEY WORDS:** *Petition for postconviction relief; R.C. 2953.21; substantive grounds for relief; guilty plea.*

*The trial court did not err in denying a petition for postconviction relief without a hearing because the defendant failed to demonstrate any substantive ground for relief.*

## CASE DECISION LIST

**109654** GARFIELD HTS. MUNI. G CIVIL MUNI. & CITY  
GARFIELD ESTATES, LLC v FALICIA WHITTINGTON

Affirmed in part, reversed in part and remanded.

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

**KEY WORDS:** *Summary judgment; Civ.R. 56(C); breach of lease agreement; request for admissions; Civ.R. 36; default admissions; contradictory information in admissions; genuine issue of material fact.*

*Where tenant failed to respond to landlord's request for admissions and did not move implicitly or explicitly to withdraw or amend the default admissions, trial court properly granted summary judgment to landlord on the issue of liability for breach of lease agreement. However, because tenant's default admissions - the sole evidence landlord relied on to support its summary judgment motion - contained contradictory information regarding its damages, landlord did not meet its burden of demonstrating the absence of a genuine issue of material fact on that issue. Trial court, therefore, erred to the extent it granted summary judgment in favor of landlord on the issue of damages.*

**109775** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN E. KOBAL v RBC WEALTH MANAGEMENT, ET AL.

Affirmed.

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

**KEY WORDS:** *Sua sponte dismissal; Civ.R. 12(B)(6); res judicata; statute of limitations.*

*The trial court properly dismissed plaintiff-appellant's claims against defendants where the complaint failed to state a claim upon which relief could be granted, the claims were barred by res judicata, and the claims were barred by the statute of limitations.*

**109957** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE T.S.

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *R.C. 2151.414(B)(1)(a)/permanent custody; sufficiency; manifest weight; best interest of the child; ineffective*

(Case 109957 continued)

**assistance of counsel.**

**There was competent, credible evidence sufficient for the trial court to grant permanent custody to the agency, and the trial court's decision was not against the manifest weight of the evidence.**

**The agency relied on R.C. 2151.414(B)(1)(a) that allowed for alternate grounds to file for permanent custody and not the more restrictive statute that required custody for a consecutive 12 out of 22 months before requesting permanent custody. Appellant's trial counsel's failing to argue premature filing for permanent custody was not a serious flaw and did not fall below a reasonable standard of performance.**