

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 10, 2021

**108240** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TREASURER OF CUYAHOGA COUNTY, OHIO v  
DURHAM CONSTRUCTION TRADE INSTITUTE, ET AL.

Affirmed.

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

**KEY WORDS:** *Foreclosure for nonpayment of taxes; objections; magistrate's decision; Civ.R. 53(D)(3)(b)(iv); plain error; determination of amount of taxes owed; R.C. 5721.18; delinquent land certificate; prima-facie evidence; R.C. 5721.19(A); R.C. 5709.12; tax-exempt; used exclusively for charitable purposes; R.C. 5715.12; notice of tax hearing.*

*Where appellant did not timely and specifically object to magistrate's decision, it forfeited appellate review of all but plain error. Appellant made no showing of plain error in action for foreclosure based on nonpayment of taxes. The record reflected that trial court determined tax delinquency based on delinquent land certificate, which, pursuant to R.C. 5721.18(A), was prima-facie evidence of the amount and validity of the taxes, assessments, charges, penalties, and interest due and unpaid. There was nothing in the record to indicate that real property at issue was being used by appellant exclusively for charitable purposes and was tax-exempt under R.C. 5709.12. Appellant did not establish that treasurer was required to produce evidence at tax hearing that appellant had received notice that its property was subject to being taxed before the trial court could properly issue a decree of foreclosure under R.C. 5715.12. Even if appellant did not receive notice of the tax hearing, it was not denied due process where it was properly served with the complaint, the treasurer's motion requesting a tax hearing and a court order and magistrate's decision indicating that a tax hearing had been held and did not object to the magistrate's decision or appeal the denial of its motion for relief from judgment.*

**108740** PARMA MUNI. C CRIMINAL MUNI. & CITY  
CITY OF PARMA v CHRISTOPHER M. RITONDARO

Vacated and remanded.

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

**KEY WORDS:** *Impersonating an officer; R.C. 2921.51; Parma Codified Ordinances 606.26; federal law enforcement officer; sufficiency; Crim.R. 29; manifest weight.*

*Appellant's conviction for impersonating an officer was not*

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**supported by sufficient evidence. The prosecution failed to prove that appellant impersonated an officer, as defined under R.C. 2921.51(A)(4), beyond a reasonable doubt.**

**109448** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v STACEY BAIRD

**109449** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHAEL BAIRD

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Crim.R. 32.1; motion for new trial; res judicata; Brady material; exculpatory evidence; ineffective assistance of counsel; Fourth Amendment; protective sweep of premises.*

*New evidence regarding statements from the victim was not exculpatory, and as such, not subject to disclosure under the Brady rule. Further, appellants entered guilty pleas, waiving their ability to challenge the evidence and their abandoned motion to suppress. Appellants did not present evidence that clearly showed they would have prevailed on the merits of a motion to suppress had they not entered pleas and did not show they suffered ineffective assistance of counsel where police were justified in the protective sweep of the home where a shooting occurred.*

**109583** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KEIWAUN DANIEL

Reversed in part, vacated in part, and remanded.

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

**KEY WORDS:** *Reagan Tokes Law; constitutionality of statute; due process; rebuttable presumption of release; liberty interest; notice; opportunity to be heard; minimum safeguards.*

*The Reagan Tokes Law, which establishes an indefinite sentencing scheme for certain felonies, is unconstitutional in that it violates prison inmates' due process rights. The presumptive release date in R.C. 2967.271 creates a liberty interest. This liberty interest requires at least the minimum due process protections of notice and a meaningful opportunity to be heard. The statutory procedures found in R.C. 2967.271(C) and (D) and used to rebut the presumptive release date do not provide the required due process safeguards.*

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**109595** CLEVELAND MUNI. G CIVIL MUNI. & CITY  
TRABUCO HOMES LLC v DARNELL BREWER

Dismissed.

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

**KEY WORDS:** *Forcible entry and detainer; possession; leased premises; moot; stay of execution; R.C. 1923.14.*

*Forcible entry and detainer actions determine only the right to immediate possession. Once possession is restored to the landlord, the forcible entry and detainer action becomes moot. Here, because the appellant vacated the premises and possession was restored to the appellee, possession is no longer at issue and the appeal is moot.*

**109612** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LISA KENDRICKS v THE CLEVELAND CLINIC FOUNDATION

Reversed and Remanded.

Emanuella D. Groves, J., Sean C. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Workers' compensation, subrogation, declaratory judgment, future estimated payments, statutory interpretation, civil jury trial waiver, R.C. 4123.93 and R.C. 4123.931.*

*Workers' compensation creates a right of subrogation in an entity defined as a statutory subrogee. When a claimant sues a tortfeasor for damages the subrogee is entitled to receive from any settlement a portion of their subrogation interest. When the parties cannot agree as to what that subrogation is, they are entitled to a hearing and the presentation of evidence to determine the amount of the settlement that applies to that interest.*

*When the trial court makes the determination of the subrogation interest without considering future estimated payments and without having a trial, especially when there is a jury demand and no waiver of a jury, the trial court is in error.*

**109651** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ROBERT MERCER v BRIAN GOANS, ET AL.

Affirmed.

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

**KEY WORDS:** *Civ.R. 56, summary judgment, defamation per se.*

**The trial court properly granted summary judgment. Appellant failed to demonstrate that the statements complained of were false, which is a key element of a defamation per se claim.**

**109670** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTOINE SEALEY, JR.

Affirmed.

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

**KEY WORDS:** *Reagan Tokes Law; constitutionality of statute; due process; rebuttable presumption of release; liberty interest; notice; opportunity to be heard; minimum safeguards.*

**The Reagan Tokes Law, which establishes an indefinite sentencing scheme for certain felonies, is unconstitutional in that it violates prison inmates' due process rights. The presumptive release date in R.C. 2967.271 creates a liberty interest. This liberty interest requires at least the minimum due process protections of notice and a meaningful opportunity to be heard. The statutory procedures found in R.C. 2967.271(C) and (D) and used to rebut the presumptive release date do not provide the required due process safeguards.**

**109791** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JAMES AUSTIN, ET AL. v CITY OF WARRENSVILLE HEIGHTS, ET AL.

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Negligence; Civ.R. 12(C)/motion for judgment on the pleadings; R.C. Chapter 2744/immunity; duty of care.*

**Appellants failed to show that the city employee function was proprietary and not governmental thereby failing to establish an exception for immunity under R.C. Chapter 2744 existed. The special assessment inured a pecuniary interest to the homeowners of the city, including appellants and not to the city. Appellants failed to show that a fiduciary-like or legal relationship existed between appellants and appellee; appellee therefore had no duty to appellants. The trial court's grant of appellee's motion for judgment on the pleadings was proper.**

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**109828** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v COREY WANTON

Reversed and remanded.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Crim.R. 48; dismissal of criminal charges; Crim.R. 5; standard of review; abuse of discretion.*

*A trial court has jurisdiction to dismiss a criminal case pursuant to Crim.R. 48 and such dismissal is reviewed upon an abuse of discretion. Crim.R. 5 does not prohibit the filing of misdemeanor charges in a municipal court and the simultaneous prosecution of associated felony charges in a common pleas court, nor does a violation of the rule mandate dismissal of charges. The trial court's application of Crim.R. 5 to a case in which no felony charges were filed is a misapplication of law and constitutes an abuse of discretion.*

**109872** SHAKER HTS. MUNI. C CRIMINAL MUNI. & CITY  
UNIVERSITY HEIGHTS v TYREE A. ALLEN

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Civ.R. 60(B)/motion for relief from judgment; motion for reconsideration.*

*The record does not sustain appellant's claim that appellant filed a motion for relief from judgment rather than a motion for reconsideration. There was no error where the trial court denied appellant's motion for reconsideration of the trial court's previous judgment.*

**109877** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOHN FREDIEU v CASE WESTERN RESERVE UNIVERSITY

Affirmed.

Sean C. Gallagher, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Summary judgment; Civ.R. 56; breach of contract; tenure; damages; causation; substantial prejudice.*

*The trial court properly granted summary judgment in favor of appellee. Appellant failed to demonstrate that but for appellee's*

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**purported breach of contract, he would have been awarded tenure. Accordingly, appellee was entitled to judgment as a matter of law.**

**109880** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
PATRICK X. KENNEDY v GEORGE J. STADTLANDER, ET AL.

Reversed and remanded.

Larry A. Jones, Sr., P.J., Eileen A. Gallagher, J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS: Arbitration agreement; motion for order compelling arbitration.**

***The trial court erred where it denied appellants' joint motion to compel arbitration. Appellee's claims, under the terms of the operating agreement, fall within the scope of the arbitration clause.***

**109899** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ANDRE SMITH v WILLIAM H. SMITH

Affirmed.

Larry A. Jones, Sr., P.J., Eileen A. Gallagher, J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS: Civ.R. 56(C)/summary judgment; statute of limitations; laches; abuse of discretion.**

***Appellant's complaint was barred by the statute of limitations, alternately, appellee's laches defense is not applicable. The trial court did not abuse its discretion where it granted appellee's motion for summary judgment.***

**109903** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICAH WILLIAMS

Reversed and remanded.

Eileen A. Gallagher, J., Larry A. Jones, Sr., P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS: Judicial release; statutory findings; R.C. 2929.20(J).**

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**109962** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CHRIS VO v RICK GORSKI, ET AL.

Vacated in part; dismissed in part.

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

**KEY WORDS:** *Motion to dismiss; nunc pro tunc order; Civ.R. 60(A); clerical mistakes; errors of oversight or omission; substantive changes; dismissal with prejudice; dismissal without prejudice; final, appealable order; jurisdiction.*

*Trial court erred in using a nunc pro tunc order to modify its dismissal of complaint “without prejudice” to a dismissal “with prejudice” where there was nothing in the record that showed that the trial court’s nunc pro tunc order sought to correct a clerical mistake or an error arising from oversight or omission or that the trial court had actually decided to dismiss complaint with prejudice and then inadvertently indicated that complaint was dismissed without prejudice in its original order. Nunc pro tunc order vacated; appeal dismissed for lack of jurisdiction to the extent appellant challenged trial court’s dismissal of complaint without prejudice.*

**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.*

*After considering all the statutory factors and the totality of the circumstances, we conclude, the juvenile court’s decision awarding permanent custody to CCDCFS was not supported by clear and convincing evidence. As a result, we find the trial court abused its discretion by granting CCDCFS’ motion for permanent custody.*

**110030** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE L.L.

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Lisa B. Forbes, J., concur.

***KEY WORDS: Permanent custody; Indian Child Welfare Act; best interest of the child.***

***The trial court complied with the ICWA when it addressed the ICWA inquiry directly to appellant parent in open court on three different occasions before the permanent custody hearing. Clear and convincing evidence shows that, in consideration of the child's custodial history and his need for a legally secure permanent placement, a grant of permanent custody to the agency is in the child's best interest.***