

## CASE DECISION LIST

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**March 11, 2021**

**108840** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAVID B. CHISLTON

Vacated in part, and remanded.

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

**KEY WORDS:** *Plain error; nunc pro tunc; guilty plea; sentence.*

***Trial court erred by attempting to modify defendant's plea and prison sentence without holding a new sentencing hearing and outside of defendant's presence.***

**109048** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
JAMES B. MCMILLAN v TONYA MCMILLAN

Affirmed.

Mary Eileen Kilbane, J., and Michelle J. Sheehan, J., concur; Mary J. Boyle, A.J., dissents with separate dissenting opinion.

**KEY WORDS:** *Divorce; ward; guardianship; R.C. 3105.01(J); Civ.R. 15(B).*

***The trial court did not abuse its discretion in granting divorce. Husband filed for divorce. Months later, he was declared incompetent in separate proceedings and his daughter was appointed his guardian. The divorce proceedings continued. Both Appellant-wife and the daughter testified at trial. The evidence supported that Husband and Appellant-wife had voluntarily lived separate and apart for more than one year. Although different grounds were pleaded in the divorce complaint, the court did not abuse its discretion in amending the complaint to conform to the evidence pursuant to Civ.R. 15 where the issue of living separate and apart was tried without objection by either party.***

**109198** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v LATASHA WISNIEWSKI

Affirmed.

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

**KEY WORDS:** *Crim.R. 7/indictment; sufficiency.*

***Appellant's due process rights were not violated. Appellant was***

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**properly informed of the charges against her in the indictments.**

**The evidence submitted at trial was sufficient to sustain appellant's convictions.**

**109332** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE J.H., ET AL.

Affirmed.

Larry A. Jones, Sr., P.J., and Lisa B. Forbes, J., concur; Mary Eileen Kilbane, J., dissents with separate opinion.

**KEY WORDS:** *Juv.R. 4/right to counsel; plain error.*

***Review is for plain error because appellant raised issues on appeal that she did not raise in her objections to the magistrate's decision. In addition, appellant failed to file a transcript, therefore, this court is unable to address appellant's issues raised in her objections to the magistrate's decision. Additionally, because appellant failed to file a transcript, this court presumes regularity of the trial court's proceedings.***

**109345** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO  
STATE OF OHIO v HENRY A. JORDAN

Affirmed.

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

**KEY WORDS:** *petition for postconviction relief; R.C. 2953.21(A)(1); R.C. 2953.21(C); actual innocence; Brady evidence; ineffective assistance of counsel; res judicata; judicial bias; findings of fact and conclusions of law.*

***The trial court's judgment denying the defendant's petition for postconviction relief without a hearing was affirmed. The petitioner's arguments, that (1) his due process rights were violated because the trial court adopted the state's proposed findings of fact and conclusions of law, (2) he was denied effective assistance of counsel because counsel failed to adequately investigate his case, (3) the state failed to disclose exculpatory evidence to him in violation of Brady v. Maryland, and (4) he was actually innocent of the crimes, were barred by res judicata in part and without merit in part. The petitioner's remaining argument, that the cumulative effect of the errors denied him a fair trial, was also without merit.***

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**109351** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CLEVELAND POLICE PATROLMEN'S ASSOCIATION v CITY OF CLEVELAND

Affirmed.

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

**KEY WORDS:** *Application to vacate an arbitration award; R.C. 2711.13; application to confirm an arbitration award; R.C. 2711.09; application to vacate an arbitration award treated as a motion; R.C. 2711.05; procedure for service of a motion when a party is represented by counsel; Civ.R. 5(B)(1).*

*The plaintiff failed to serve a copy of its application to vacate an arbitration award on the defendant's counsel within three months after the arbitration award. The plaintiff therefore failed to comply with R.C. 2711.13, and the trial court lacked jurisdiction over the application to vacate the arbitration award.*

**109388** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v DAMIEN BODY

Affirmed.

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *double jeopardy; Crim.R. 12(C); R.C. 2941.29; motion to dismiss indictment; waiver; sufficiency of the evidence; R.C. 2923.13(A)(2); R.C. 2923.12(A)(2); R.C. 2923.16(B); having weapons while under a disability; improperly handling a firearm in a motor vehicle; carrying a concealed weapon; possession of a firearm; constructive possession.*

*The trial court's judgment convicting the defendant of having weapons while under a disability, improperly handling a firearm in a motor vehicle, and carrying a concealed weapon was affirmed. Because the defendant failed to move the trial court to dismiss the indictment against him, he waived any double jeopardy arguments for purposes of appeal. The state presented sufficient evidence that the defendant constructively possessed a firearm to support all three convictions involving a firearm.*

**109396** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMES WILLIAMS

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Reversed and remanded.

Lisa B. Forbes, J., Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Judicial release; eligible offender; mandatory prison term; notice of prior conviction specification.*

**Defendant's prison sentence for notice of prior conviction specifications was mandatory as a matter of law, and defendant was not eligible for judicial release. Trial court's granting defendant's motion for judicial release reversed.**

<b>109416</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CARL HOLLAND, III			

Affirmed.

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

**KEY WORDS:** *Evid.R. 701/opinion testimony; jury instruction for flight; R.C. 2929.14(C)(4)/consecutive sentences; manifest weight.*

**The detective's testimony was given, not as an expert, but rather as lay testimony clarifying what the detective's investigation found. There was no abuse of discretion where the trial court allowed this testimony.**

**Witness testimony that appellant ran from the scene was sufficient to warrant a flight instruction to the jury.**

**The trial court considered facts and the seriousness of appellant's actions that resulted in the senseless murder of the victim - facts that support the imposition of consecutive sentences.**

**Appellant's convictions are not against the manifest weight of the evidence.**

<b>109465</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
R. R. v J.H., JR.			

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Civil stalking protection order; civil sexually oriented offense protection order; R.C. 2903.214; preponderance of the evidence.*

**Trial court properly issued a civil stalking protection order and a civil sexually oriented offense protection order to the petitioner because she demonstrated by a preponderance of the evidence**

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**that the respondent engaged in a pattern of conduct that caused her mental distress and that the respondent had committed a sexually oriented offense against her.**

**109488** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
GEORGE ROARK, ET AL. v KEYSTATE HOMES, LLC., ET AL.

Affirmed.

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

**KEY WORDS:** *Arbitration; stay; R.C. 2711.01(A); R.C. 2711.02(B); R.C. 2711.02(C); contract; cancellation; dispute; deposit; mechanic's lien; affidavit; waiver; motion to compel; abeyance.*

***Upheld trial court's decision to stay proceedings pending arbitration. The arbitration clause remained enforceable despite any alleged cancellation of the contract in which the arbitration clause was contained. The claims, which stemmed from disputes relating to the cancellation of the contract, the alleged wrongful withholding of a deposit, and the alleged filing of a false affidavit for mechanic's lien, could not be maintained without reference to the contract and fell within the scope of the parties' written arbitration agreement. There was no waiver of the right to arbitrate. The trial court did not abuse its discretion by holding appellants' motions to compel in abeyance when the discovery they sought to compel was not relevant to the validity or the enforceability of the arbitration provision.***

**109548** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
KEITH HOLMES v CUYAHOGA COMMUNITY COLLEGE, ET AL.

Affirmed.

Michelle J. Sheehan, J., and Kathleen Ann Keough, J., concur; Sean C. Gallagher, P.J., concurs (with separate opinion attached).

**KEY WORDS:** *Immunity of political subdivision employee; judgment on the pleadings; reverse racial discrimination; R.C. 2744.03(A); R.C. 2744.09.*

***Plaintiff's complaint for claims of reverse racial discrimination, harassment, and retaliation contained sufficient allegations for the liability of defendant political subdivision employee pursuant to the exceptions to immunity set forth in R.C. 2744.03(A)(6)(a) and (b). The trial court properly denied defendant's motion for judgment on the pleadings.***

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**109549** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MITCHELL BENSON SILVERMAN v CITY OF CLEVELAND

Affirmed.

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

**KEY WORDS:** *R.C. Chapter 2744, political subdivision tort liability, R.C. 2744.01, immunity, R.C. 2744.02(B), exceptions to immunity, R.C. 2744.02(B)(3), negligent failure to repair public roadways.*

*Summary judgment for the appellee city was properly granted in this case. The parties agreed that R.C. 2744.02(B)(3) applied to the stated facts; however, appellant failed to produce sufficient evidence to demonstrate that a genuine issue of material fact existed as to actual or constructive notice of the pothole.*

**109556** CLEVELAND MUNI. C CRIMINAL MUNI. & CITY  
CITY OF CLEVELAND v JOHN P. CORNELY

Reversed and remanded.

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

**KEY WORDS:** *Community control sanctions; abuse of discretion; Jones three-prong test.*

*Although a trial court is granted broad discretion in imposing community control sanctions, the trial court's discretion "is not limitless."*

*We find the imposed indefinite condition, though seemingly well-intentioned, designed to both rehabilitate and protect society, is not reasonable or appropriate and therefore falls short on the Jones three-prong test. The resultant indefinite separation of father from children also impinges upon the "fundamental liberty interest" parents have in the care, custody, and management of their children.*

*Consequently, we are constrained to find that the trial court abused its discretion in imposing, and later denying, the motion to modify the indefinite condition. In so finding, we are cognizant of a trial court's desire, when fashioning community control sanctions, to strike the proper balance in protecting the parties involved. Nonetheless, we find nothing in the record that would support the indefinite no-contact order, which has now separated a once totally involved father from his children for more than two years.*

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<b>109581</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STEVEN M. GOODMAN, ET AL. v DAN RICH, LLC, ET AL.			

Affirmed.

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

**KEY WORDS:** *Summary judgment; de novo; personal injuries; trip and fall; patio; paver; landlord; tenant; negligence; open and obvious; negligence per se; Landlord-Tenant Act; 5321.04(A)(1); R.C. 5321.04(A)(2); expert; statutory duty; Residential Code of Ohio; fit and habitable.*

*Trial court's decision to grant summary judgment in favor of landlord-appellees was affirmed on claims arising from a tenant-appellant's trip-and-fall on a patio paver. Open-and-obvious doctrine applied to bar common-law negligence claims when appellant had previously fallen on a patio paver and had knowledge that the patio contained some loose pavers. Summary judgment also was warranted on the negligence per se claims for violations of Ohio's Landlord-Tenant Act because appellants failed to demonstrate that appellees breached a statutory duty imposed under R.C. 5321.04(A)(1) or R.C. 5321.04(A)(2). A court interprets statutory provisions as a matter of law, and the code provisions cited by plaintiffs' expert were not applicable to the brick-and-paver patio on which the appellant allegedly fell. Also, the record demonstrated that appellants continued to routinely use the patio and that the premises remained fit and habitable.*

<b>109635</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RUSSELL RAY			

Affirmed.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Aggregate prison sentence; journal entry; void; voidable; Crim.R. 43.*

*Defendant's sentence is not void or voidable when the trial court does not state the total aggregate prison sentencing on the record during sentencing but includes it in the sentencing journal entry. There was also no violation of Crim.R. 43 because the trial court's journal entry stating the total aggregate sentence was not substantially different than what occurred at sentencing because adding up the individual sentences imposed on each count totaled the aggregate sentence stated in the journal entry.*

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<b>109771</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ROBERT COCHRAN			

Affirmed.

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

**KEY WORDS:** *Motion to vacate void sentence; contrary to law; indefinite sentence for murder; void sentence; voidable sentence; direct appeal; collateral attack; res judicata.*

*Defendant's sentence for murder, which was worded differently than mandated by the sentencing statute, was voidable, rather than void. This was subject to challenge only on direct appeal. Defendant's collateral attack barred by res judicata.*

<b>109811</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
HOLLEE J. ANDERSON v DISCOUNT DRUG MART, INC.			

Affirmed.

Eileen A. Gallagher, J., and Larry A. Jones, Sr., J., concur; Sean C. Gallagher, P.J., concurs with separate opinion.

**KEY WORDS:** *Civ.R. 56(C); declaratory and injunctive relief; deceptive act or practice; R.C. 1345.02(A); multiple-unit pricing promotions; R.C. 1345.02(B)(8); specific price advantage; Ohio Adm.Code 109:4-3-02(A)(1); Ohio Adm.Code 109:4-3-02(A)(2)(g).*

*Trial court did not err in granting defendant retailer's motion for summary judgment and denying plaintiff consumer's motion for summary judgment on complaint seeking declaratory and injunctive relief for alleged deceptive acts or practices under R.C. 1345.02(A). There was nothing deceptive, untrue or inaccurate in defendant's multiple-unit pricing promotions. Plaintiff did not show that defendant's multiple-unit pricing promotions represented that a specific price advantage existed when it did not under R.C. 1345.02(B)(8) and presented no evidence from which a reasonable jury could otherwise find that defendant's representations were false, material and would mislead a reasonable consumer. Defendant's failure to state in its advertisements that a consumer must purchase at least one unit of the advertised product for the pro-rata advertised sales price to apply did not violate Ohio Adm.Code 109:4-3-02(A)(2)(g) and did not constitute a deceptive act or practice under Ohio Adm.Code 109:4-3-02(A)(1) or R.C. 1345.02(A).*



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<b>109928</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE K.S., ET AL.			

Affirmed.

Frank D. Celebrezze, Jr., P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

***KEY WORDS: Permanent custody; termination of parental rights; R.C. 2151.414; clear and convincing evidence; manifest weight of the evidence; best interests of the children; abuse of discretion; guardian ad litem; independent counsel; plain error; Sup.R. 48.***

***The juvenile court's judgment in granting permanent custody to CCDCFS was not against the manifest weight of the evidence, and the court did not err in considering or relying upon the GAL's report and recommendation.***