

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 5

**October 28, 2021**

**109478** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
NORMAN G. HONEK, ET AL. v DONNA E. CHIDSEY, ET AL.

**109485** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JOSEPH GIELAS v DONNA E. CHIDSEY, ET AL.

**109486** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DORA LOPICCOLO, ET AL. v DONNA E. CHIDSEY, ET AL.

Reversed and remanded.

Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur; Emanuella D. Groves, J., dissents with separate opinion.

**KEY WORDS:** *Summary judgment; political subdivision immunity; R.C. Chapter 2744; proprietary function; outdoor concert; city property; negligence; licensee; duty; reckless; wanton; willful; foreseeable; injury.*

*Trial court erred in denying the city's motion for summary judgment based on R.C. Chapter 2744 political subdivision immunity. A city hosting an outdoor concert on city property is engaging in a proprietary function. The attendees of the concert were deemed licensees; thus owed a duty from willful, wanton, or reckless conduct that is likely to cause injury. It was unforeseeable that an errant driver would drive through the wooden barriers causing serious and fatal injuries to the concert attendees. No genuine issue of material facts exists demonstrating that the city breached its duty of care.*

**110275** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
RIVEREDEGE DENTISTRY PARTNERSHIP v CITY OF CLEVELAND, ET AL.

Affirmed.

Eileen T. Gallagher, J., Larry A. Jones, Sr., P.J.,\* and Kathleen Ann Keough, J., concur.

\* Judge Larry A. Jones, Sr., concurred in this Journal Entry and Opinion prior to his death on October 7, 2021.

(The Ohio Constitution requires the concurrence of at least two judges when rendering a decision of a court of appeals. Therefore, this announcement of decision is in compliance with constitutional requirements. See *State v. Pembaur*, 69 Ohio St.2d 110, 430 N.E.2d 1331 (1982).)

**KEY WORDS:** *Immunity; political subdivision; negligence; governmental function; proprietary; design; construction; operation; maintenance; equitable relief; injunction; grant program; joint venture.*

## CASE DECISION LIST

(Case 110275 continued)

**The trial court did not err by granting the NEORS D's motion to dismiss pursuant to Civ.R. 12(B)(6). Plaintiff can prove no set of facts entitling it to the relief requested. The political subdivision is immune from liability and has no authority to provide the plaintiff the equitable relief sought in the amended complaint.**

**110307** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v RALPHIA WRIGHT

Affirmed in part, vacated in part, and remanded.

Sean C. Gallagher, P.J., and Emanuella D. Groves, J., concur; Frank D. Celebrezze, Jr., J., concurs with separate opinion.

**KEY WORDS:** *Attempted endangering children; R.C. 2923.02, R.C. 2919.22(A); fourth degree; felony; furthermore clause; physical harm; guilty plea; plea agreement; amended; indictment; postrelease control; R.C. 2967.08(C); R.C. 2967.28(D); imposition; discretionary; period; implement; prison term; R.C. 2929.13(B)(1)(b)(ii); contrary to law; ineffective assistance.*

***Vacated the mandatory postrelease control portion of appellant's sentence and remanded for a resentencing hearing limited to the imposition of discretionary postrelease control pursuant to R.C. 2967.08(C). The judgment of the trial court was affirmed in all other respects. Upheld appellant's conviction for attempted endangering children with a furthermore clause, a felony of the fourth degree. The indicted charge was amended to an attempt, and the furthermore clause remained. Appellant understood the nature of the charge and entered a guilty plea, which is a complete admission of the facts set forth in the indictment including that the violation resulted in serious physical harm to the child. The trial court had the discretion to impose a prison term pursuant to R.C. 2929.13(B)(1)(b)(ii), and the sentence imposed by the trial court was not contrary to law. There was no ineffective assistance of counsel. Under R.C. 2967.28(C), the trial court must impose postrelease control for the statutorily required "period" of "up to two years" as part of the offender's sentence. The Ohio Department of Rehabilitation and Correction is responsible for implementing the postrelease control portion of the sentence in accordance with R.C. 2967.28(D) if it determines that a period of postrelease control is necessary for that offender.***

**110363** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: C.L. ET AL.,

Affirmed.

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

## CASE DECISION LIST

**KEY WORDS:** *Legal custody; exclusion of evidence; abuse of discretion; best interests of children; standard of review of order of visitation.*

*In determining custody of the children, the juvenile court did not abuse its discretion in precluding appellant's testimony where appellant was unable to make a knowing, intelligent, or voluntary waiver of her right not to testify. The juvenile court further considered the necessary factors in determining that the children's best interests were met by awarding custody to A.A. and that determination was not against the manifest weight of the evidence. Under the totality of the circumstances, an order of supervised visitation for appellant and the children was appropriate and not an abuse of discretion.*

**110422** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: A.S.

**110472** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: A.S., JR.

Affirmed.

Mary J. Boyle, A.J., Lisa B. Forbes, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Parental rights; permanent custody; clear and convincing evidence; R.C 2151.414(D)(1) and (D)(2)/best interest of the child; R.C 2151.414(B)(1)(d)/temporary placement; R.C. 2151.414 (E)(1), (2), (4) and (16)/placement of child within a reasonable time; R.C. 2151.353(A)(3)/legal custody; manifest weight.*

*It was not against the manifest weight of the evidence where the trial court granted appellee's motion for permanent custody. Mother and Father were unable to successfully complete multiple components of the case plan. Sufficient evidence of mental illness, intellectual disabilities, failure to regularly visit the child, inappropriate behavior during visits, and Mother and Father's inability to properly educate themselves on the child's severe medical and dietary needs is documented in the record.*

*Mother's motion for legal custody was properly denied by the trial court. Mother was not able to successfully complete her case plan, and concerns remained regarding Mother's mental health.*

**110489** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ROSS J. POLLOCK v BRIAN J. BRITT, DDS, LLC, ET AL.

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

## CASE DECISION LIST

**KEY WORDS:** *Summary judgment; statute of repose; medical malpractice; dental malpractice.*

**Plaintiff's complaint was barred by the medical malpractice statute of repose where both the complaint and plaintiff's expert alleged that the negligence giving rise to this case occurred more than four years before the complaint was filed.**

**110505** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: D.H.

Affirmed.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Permanent custody; clear and convincing evidence; R.C. 2151.414; R.C. 2151.414(D)(1); R.C. 2151.414(D)(2); best interest; abuse of discretion.*

**Trial court did not abuse its discretion in determining pursuant to R.C. 2151.414 that an award of permanent custody to the agency was in the child's best interest where its determination was supported by clear and convincing evidence.**

**110507** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: J.D., ET AL.

Affirmed.

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

**KEY WORDS:** *Permanent custody; best interest of the child; manifest weight; clear and convincing evidence; abandoned; visits; permanency.*

**Juvenile court's judgment granting permanent custody of children to CCDCFS was supported by clear and convincing evidence and was not against the manifest weight of the evidence where Mother failed to visit children for almost an entire year while the children were in temporary custody and where Mother continued to struggle with substance abuse.**

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 5 of 5

**110531** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: J.L.

**110533** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: J.L., JR.

Reversed and remanded.

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

**KEY WORDS:** *Guilty plea; conviction; admission; juvenile court; serious youthful offender.*

***The Juvenile Court erred in denying appellants' motion to strike language referencing convictions and guilty pleas from its dispositional judgment entry since children in the juvenile court do not plead guilty and are not convicted of crimes.***