

## CASE DECISION LIST

September 16, 2021

**109558** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
131 MILES, L.L.C., ET AL. v 3M&B, L.L.C., ET AL.

Affirmed.

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

**KEY WORDS:** *Civ.R. 11; R.C. 2323.51; attorney fees; sanctions; frivolous conduct; unjust enrichment; abuse of discretion; de novo.*

*In order to prove that a claim is not warranted under existing law, the appellant must prove that no reasonable lawyer would have brought the claim. Here, appellant argues that appellees had no valid claim against it because they never contracted for any construction work together. Rather, appellees contracted with a franchisee of appellant. While it is true that their status solely as franchisor does not make them liable under the contracts of its franchisees, they could become liable if the relationship extends to that of a principal-agent. Therefore, appellees could argue in good faith, under existing law that appellant could become liable for the contact appellees had with appellant's franchisee if a principal-agent relationship exists.*

*Under Civ.R. 11, we find nothing in the record to suggest that appellees' attorney did not read the third-party complaint against appellant nor do we find any evidence that it was filed for purposes of delay. Further, as discussed, there is a good faith argument under existing law for the arguments made in the third-party complaint, so it cannot be said that the attorney did not harbor good grounds to support it to the best of his knowledge.*

**109582** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SHAKIRA D. GRAHAM

Affirmed.

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

**KEY WORDS:** *Evid.R. 403; gruesome photographs; plain error; abuse of discretion; ineffective assistance of counsel; manifest weight of the evidence; aggravated murder.*

*The admission of relevant evidence is within the trial court's discretion, and the admission of a large quantity of photographs without objection did not amount to plain error where the photographs were relevant and aided the witnesses in testifying as to the victim's injuries and cause of death. The failure to object to the relevant photographs was not ineffective assistance of counsel. Appellant's convictions were not against the manifest weight of the*

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(Case 109582 continued)

**evidence where the convictions were supported by overwhelming evidence and any minor inconsistencies in witness testimony did not undermine evidence of the appellant's guilt.**

**109997** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CURTIS HARRIS

Reversed and remanded.

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

**KEY WORDS: Motion to suppress; reasonable suspicion; reversal; furtive movement.**

***Trial court erred in denying appellant's motion to suppress. The traffic stop was extended and there was no reasonable suspicion that would support extending the stop.***

**110198** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: G.S.

Affirmed.

Sean C. Gallagher, P.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Hazing; kidnapping; sexual battery; unlawful restraint; delinquent; disposition; probation report; recommendation; plain error; discretion; abuse of discretion; overriding purposes; reasonably calculated; ineffective assistance of counsel; continuance; community control; Ohio Department of Youth Services; juvenile sex offender; assessment; R.C. 2152.19(A); R.C. 2152.01(A); R.C. 2152.01(B).**

***Affirmed the disposition ordered by the juvenile court after appellant was adjudicated delinquent of multiple felony and misdemeanor counts arising from a hazing incident. The charges included kidnapping, and multiple counts of sexual battery, unlawful restraint, and hazing. The trial court acted within its discretion in proceeding to disposition despite the lack of a completed juvenile sex offender registration and notification assessment and a recommendation in the probation report. No plain error occurred in this regard, and counsel was not ineffective for failing to request a continuance. The juvenile court did not abuse its discretion committing appellant to the Ohio Department of Youth Services. The record demonstrated the juvenile court considered the overriding purposes of delinquency disposition under R.C. 2152.01(A) and that the disposition was reasonably calculated to achieve those purposes.***

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**110222** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SHARON COLLIER

Reversed and remanded.

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

**KEY WORDS:** *Jail-time credit; plain error; department of corrections and rehabilitation.*

*Trial court erred by including time served in ODRC custody in its jail-time calculation because the ODRC is solely responsible for calculating jail-time credit for time served in its custody.*

**110225** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v SHARON COLLIER

Reversed and remanded.

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

**KEY WORDS:** *Judicial release; R.C. 2929.20; eligible offender; agreed sentence; jail-time credit; breach of sentencing agreement.*

*The trial court erred when it denied defendant's motion for judicial release because it believed that defendant's sentence was an agreed-upon mandatory sentence when it was not.*

**110233** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TREASURER OF CUYAHOGA COUNTY, OHIO v BERGER PROPERTIES OF OHIO, LLC

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Foreclosure; R.C. 2923.44; discretion of court to distribute excess funds.*

*In a foreclosure action, the trial court retains jurisdiction to distribute excess funds after a sheriff's sale. R.C. 2944 does not apply to mandate distribution of excess funds to the owner where the trial court has not finalized the case. Further, the trial court did not abuse its discretion in distributing excess funds to a bank that held a judgment against the property owner, even though the bank did not join the foreclosure action until after the sheriff's sale was completed.*

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**110263** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
WILLIAM R. WATT v WESTFIELD NATIONAL INSURANCE COMPANY, ET AL.

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Summary judgment; underinsured motorist coverage; breach of contract; contract interpretation.*

*Defendant insurance company is entitled to summary judgment as a matter of law because the decedent was not an insured under her fiancée's primary or umbrella insurance policies. Trial court's judgment affirmed.*

**110278** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v SAMUEL ROBINSON

Affirmed.

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

**KEY WORDS:** *Petition for postconviction relief; hearing; ineffective assistance of counsel; mental health issues; abuse of discretion.*

*Trial court did not abuse its discretion in denying defendant's petition for postconviction relief without a hearing because defendant's claim that counsel was ineffective for failing to investigate his mental health issues prior to trial could have been brought on direct appeal and thus was barred by the doctrine of res judicata, and even if the claim was not barred by res judicata, the record demonstrated that the defendant's claim was without merit.*

**110469** SHAKER HTS. MUNI. G CIVIL MUNI. & CITY  
TAMARA FARMER v HEALTHCARE BRIDGE

Affirmed.

Lisa B. Forbes, J., Mary J. Boyle, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Claim for unpaid overtime wages; App.R. 9(B); duty to file a transcript.*

*Appellant failed to file a transcript of the trial that is the basis of her appeal. Accordingly, we have nothing to review and must presume the regularity of the lower court's proceedings.*

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**110500** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: Z.B.

**110510** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: ZAU.B., ET AL.

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Complaint; neglect; dependency; R.C. 2151.27; abuse of discretion; dismissal; temporary custody; Juv.R. 10; final appealable order; R.C. 2505.02; special proceeding; substantial right; R.C. 5153.16; Juv.R. 22; waiver.*

*The trial court abused its discretion in dismissing appellant's complaint rather than granting appellant's motion to amend the complaint, pursuant to Juv.R. 22, to conform to the evidence presented at the adjudicatory hearing. The complaint complied with the requirements set forth in R.C. 2151.27 and Juv.R. 10, and the interests of justice warranted amending the complaint to conform to the evidence.*