

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 8

December 15, 2022

**110925** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JEFFREY GRIMES

Affirmed.

Anita Laster Mays, P.J., Michelle J. Sheehan, J., and Cornelius J. O'Sullivan, J., concur.

**KEY WORDS:** *Evid.R. 404(B), other acts evidence, manifest weight of the evidence.*

*The admission of evidence regarding appellant's violent behavior toward the victim and others did not violate Evid.R. 404(B) because it was probative of the material issue of force and was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Appellant's conviction was not against the manifest weight of the evidence.*

**111309** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v ROGER MYLES

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Domestic violence; 911 call; the victim's statement to the police; manifest weight of the evidence.*

*Appellant's conviction of domestic violence is affirmed. The victim's 911 call was admissible under Evid.R. 803(1) as a present sense impression to the hearsay rule, and the trial court properly permitted the victim to read her written statement to the police into the record pursuant to Evid.R. 803(5). Appellant's claim that his conviction was against the manifest weight of the evidence is also without merit.*

**111329** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
SHAKORIE DAVIS v 40 EAST LLC, ET AL.

Reversed and remanded.

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

**KEY WORDS:** *Abuse of discretion; motion for relief from judgment; Civ.R. 60(B)(5).*

## CASE DECISION LIST

(Case 111329 continued)

**The trial court abused its discretion by denying the appellant's motion for relief from judgment because the appellant demonstrated excusable neglect under Civ.R. 60(B).**

**111357** CLEVELAND MUNI. G Civil Muni. & City  
MIDLAND FUNDING LLC v MENDY SCHWARZMER

Affirmed.

Mary J. Boyle, J., and Anita Laster Mays, P.J., concur; Lisa B. Forbes, J., concurs in judgment only in part and dissents in part (with separate opinion).

**KEY WORDS:** *Abuse of discretion; motion to compel arbitration; waiver; totality of circumstances; FDCPA; CSPA; class action; putative class; motion to strike; interlocutory order; R.C. 2505.02(B)(5); jurisdiction.*

*The trial court did not abuse its discretion in determining that appellant-debt collector, assignee of appellee-debtor's credit card account, waived its right to arbitrate under the terms of a credit cardholder agreement between the assignor-original creditor and appellee. Appellant filed a collection action and moved for default judgment in the trial court. Appellee alleged that he lived outside the jurisdiction of the court and filed a counterclaim alleging violations of the FDCPA and CSPA. Appellant answered the counterclaim and responded to discovery requests. Appellee amended the counterclaim to assert the same claims as a putative class action. Appellant participated in the litigation and could not change course by filing a motion to compel arbitration nine months after the complaint and seven months after answering the initial counterclaim. Appellant's motion to strike the class allegations from appellee's amended counterclaim was denied by the trial court when it did not grant the motion. Denial of a motion to strike allegations concerning a putative class is an interlocutory order not subject to appellate review.*

**111375** BEDFORD MUNI. C Criminal Muni. & City  
CITY OF WARRENSVILLE HEIGHTS v NATASHA O. PARKER

Affirmed.

Cornelius J. O'Sullivan, Jr., J., and Anita Laster Mays, P.J., concur; Michelle J. Sheehan, J., concurs in judgment only.

**KEY WORDS:** *Motion to dismiss; speedy trial; R.C. 2945.71; waiver of speedy trial; manifest weight; sufficient evidence; disorderly conduct; Warrensville Hts. Codified Ordinances 509.03.*

*Appellant's counsel waived appellant's speedy trial time; therefore,*

## CASE DECISION LIST

(Case 111375 continued)

her motion to dismiss based on speedy trial had no merit. Appellant's conviction for disorderly conduct was not against the manifest weight of the evidence and was therefore also supported by sufficient evidence when she used offensive language and a garden hose to spray water at a landscaper, hired by a neighbor with whom she did not get along, to trim bushes that abutted appellant's property.

**111403** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CHRIS CAPRIOLO, ET AL. v AMERICAN CONSTRUCTION GROUP, LLC, ET AL.

Affirmed and remanded.

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

**KEY WORDS:** *Settlement agreement; motion to enforce settlement agreement; sufficient evidence; App.R. 9; presume regularity; nunc pro tunc.*

*Where appellant failed to file a transcript of the proceedings, we must presume regularity and affirm the judgment of the trial court granting plaintiff's motion to enforce the settlement agreement. Case remanded for the limited purpose of allowing the trial court to issue a nunc pro tunc correcting the clerical error.*

**111432** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v PERCY HUTTON

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *R.C. 2953.21; postconviction petition; Crim.R. 33; motion for new trial; abuse of discretion; capital case; successive postconviction petition; res judicata; direct appeal; discovery; Evid.R. 606(B).*

*The trial court did not abuse its discretion in denying appellant's successive postconviction petition because it was untimely filed, and appellant was unable to show that he was unavoidably prevented from discovery of facts upon which he relied on in his petition. Appellant also did not show by clear and convincing evidence that but for a constitutional error at trial, he would not have been found to be eligible for the death penalty. Appellant should have known that he spent time at Beech Brook as a child and did not show that his original defense counsel did not have those records. Affidavit executed by trial juror in support of petition was speculative, and Evid.R. 606(B) would have prohibited appellant from using the juror's statement. Moreover, there was no*

## CASE DECISION LIST

(Case 111432 continued)

evidence that a Bible passage had improper influence on a juror.

The petition was not a valid second-in-time, first postconviction petition; successive petitions can rarely be treated as first petitions. Ohio's postconviction statutes are constitutional. The trial court correctly denied appellant's motion for a new trial because appellant failed to provide evidence that the Beech Brook records were recently discovered, or that he was unavoidably prevented from discovering the records or show clear and convincing evidence of juror misconduct.

**111449** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CHRISTINA ALESSIO v UNITED AIRLINES, ET AL.

Affirmed.

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

**KEY WORDS:** *Summary judgment; workers' compensation claims; Ohio Industrial Commission; prior claim; denied; res judicata.*

*Affirmed the judgment of the Cuyahoga County Court of Common Pleas that granted the motion for summary judgment of United Airlines, Inc., on appellant's appeal from the denial of three of her workers' compensation claims. The claims were barred by res judicata.*

**111476** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
LINDA S. HOPSON v KENNETH J. HOPSON

Affirmed.

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

**KEY WORDS:** *Divorce; custody; post-decree motion; child support; motion to modify child support; Revised Code Chapter 3119; abuse of discretion.*

*The trial court did not abuse its discretion by not dismissing appellee's motion to modify child support where the motion was properly supported by evidence, was not barred by res judicata, and the court properly applied R.C. 3119.22 and 3119.23. The trial court did not abuse its discretion in maintaining the parties' agreement as to which parent could claim which child for tax purposes.*

## CASE DECISION LIST

**111483** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
KENT STATE UNIVERSITY v ERICA E. MANLEY

Dismissed.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Final, appealable order; personal jurisdiction; void; self-serving testimony.*

**Appeal dismissed for lack of a final, appealable order where counterclaims were not adjudicated and remained pending.**

**111489** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v STEPHEN MEADOWS

Affirmed.

Michelle J. Sheehan, P.J., Cornelius J. O'Sullivan, Jr., J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Guilty plea; maximum penalty advisement; consecutive sentences.*

**Appellant fails to demonstrate that, but for the trial court's erroneous advisement about the maximum penalty of one of the multiple counts he pleaded guilty to, he would have exercised his trial rights. Appellant's consecutive sentences are affirmed because the trial court made the statutory findings for the consecutive sentences and the findings are supported by the record.**

**111510** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v LINELL LOVELACE, III

Reversed and remanded.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Reagan Tokes Law; constitutionality.*

**The trial court erred in finding the Reagan Tokes Law unconstitutional and imposing a definite sentence contrary to the law's provisions.**

## CASE DECISION LIST

**111517** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v DARLLEL B. ORR

Affirmed.

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

**KEY WORDS:** *R.C. 2953.21; R.C. 2953.23; successive petition; jurisdiction; frivolous conduct.*

**Affirmed.** *The petitioner failed to set forth the grounds supporting a successive petition for postconviction relief as required under R.C. 2953.23(A), and as a result, the trial court lacked jurisdiction to consider the merits of the argument.*

**111563** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DEMARI J. RODGERS

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Reagan Tokes Law.*

**Appellant's sentence under the Reagan Tokes Law is affirmed pursuant to this court's en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).**

**111643** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: J.S.

Affirmed.

Frank Daniel Celebrezze, III, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Termination of parental rights; permanent custody; agency; R.C. 2151.414; clear and convincing evidence; cannot be placed with either parent within a reasonable time or should not be placed with either parent; best interest of the child; abuse of discretion; guardian ad litem; manifest weight of the evidence.*

**The juvenile court's decision was based upon competent and credible evidence. The court did not abuse its discretion in determining that permanent custody was in the best interest of J.S., and this decision was not against the manifest weight of the evidence.**

## CASE DECISION LIST

**111737** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TIAN T ELLISON, JR.

Affirmed in part, vacated in part, and remanded.

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

**KEY WORDS:** *Conceded error; nunc pro tunc; consecutive sentences; plea agreement; inducement.*

*The trial court erred in issuing a journal entry stating that the appellant pled guilty to abduction with a sexually motivated specification. As part of his plea agreement, the state amended the charge and removed the specification. Because the appellant was not charged with the specification and did not plead guilty to it, we vacate the specification and order the trial court to issue a new journal entry reflecting what actually occurred at the plea hearing. Further, at his plea hearing, the trial court told appellant that it would not impose consecutive sentences if he pled guilty. That promise became an inducement to enter the plea. Therefore, the court erred when it subsequently sentenced him to consecutive prison terms. Appellant's sexual motivation specification is vacated, the remainder of his convictions are affirmed, and the case is remanded to the trial court for proceedings consistent with this opinion.*

**111741** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DONALD GREEN, JR.

Reversed in part, vacated in part, and remanded.

Mary Eileen Kilbane, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Conceded error; R.C. 2929.18(A)(1); restitution hearing; objection by offender to amount of restitution.*

*Where the defendant-appellant objected to the amount of restitution during his sentencing hearing, the trial court was required, pursuant to R.C. 2929.18(A)(1), to conduct a restitution hearing. The trial court's failure to conduct a restitution hearing was an abuse of discretion.*

**111798** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: R.D., ET AL.

## CASE DECISION LIST

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Motion to modify temporary custody to permanent custody; termination of parental rights; clear and convincing evidence; R.C. 2151.414(B)(1); best interest of the child; R.C. 2151.414(D)(1)-(2), (E).*

*Juvenile court did not err or abuse its discretion in granting agency's motion to modify temporary custody to permanent custody. Competent, credible, clear and convincing evidence presented at the permanent custody hearing supported juvenile court's findings under R.C. 2151.414(B)(1), (D)(1)-(2) and (E)(1), (2), (4), (14) and (16).*

<b>111843</b>	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE J.C.			

Reversed and remanded.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Juvenile court; CCDCFS; ODYS; delinquent; legal custody; competing orders.*

*The juvenile court erred in denying CCDCFS's motion to terminate temporary custody after the juvenile court also committed the juvenile to the legal custody of ODYS because the court lacked the statutory authority to issue competing custody orders to two different public entities.*