

## CASE DECISION LIST

June 9, 2022

**110501** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
BLUE TECHNOLOGIES SMART SOLUTIONS, LLC v  
OHIO COLLABORATIVE LEARNING SOLUTIONS, INC.

Dismissed.

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

**KEY WORDS:** *Final order; provisional remedy; discovery order; R.C. 2505.02; adequate remedy; Civ.R. 26; attorney work product; work-product doctrine; tax returns.*

*Appeal from a discovery order that purported to require the disclosure of attorney work product and tax returns was found not to be a final, appealable order under R.C. 2505.02(B)(4) where appellants did not show that appeal following final judgment would not be an adequate remedy.*

**110567** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
DOUG WOODS v BRIAN W. SHARKIN, ET AL.

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, J., Sean C. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Default judgment; abuse of discretion; sua sponte; convert; dismiss; notice; Civ.R. 12(B)(6); Civ.R. 12(C); news; media; balanced reporting; landlord; tenant.*

*In this defamation case brought by a landlord and against news media and former tenants, the trial court's judgment is affirmed in part and reversed in part. The trial court did not abuse its discretion in denying landlord's motion for default against properly served defendants, but erred in sua sponte converting the default motion to a Civ.R. 12(B)(6) motion to dismiss without notice to the landlord and then dismissing the complaint against those defaulting defendants for failure to state a claim pursuant to Civ.R. 12(B)(6). Trial court did not err in granting the media defendants' Civ.R. 12(B)(6) motion to dismiss the complaint because the news report presented balanced reporting and it was substantially truthful. Landlord's complaint sufficiently pleaded causes of action to survive a former tenant's Civ.R. 12(B)(6) motion to dismiss and another defendant's Civ.R. (12)(C) motion for judgment on the pleadings.*

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**110742** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KELLY JONES

Reversed and remanded.

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

**KEY WORDS:** *Reagan Tokes; confrontation clause; testimonial; hearsay; excited utterance; body camera.*

*Defendant appealed his conviction and argues that the trial court erred by admitting video and audio recorded statements by the victim that constituted inadmissible testimonial hearsay. The court sustained this assignment of error finding that the video and audio recorded statements were given an hour after the assault, after the victim had left the area of the assault and the victim was in no further danger. Accordingly, those statements were given under circumstances that show they were testimonial statements under the Confrontation Clause and the admission of those statements was reversible error.*

**110748** COMMON PLEAS COURT A CRIMINAL C.P.  
CONTEMPT OF: LEIF CHRISTMAN

Affirmed in part; vacated in part; and remanded.

Kathleen Ann Keough, J., and Frank Daniel Celebrezze, III, J., concur; Sean C. Gallagher, A.J., dissents (with separate opinion).

**KEY WORDS:** *Contempt; direct; indirect; abuse of discretion; mask; administrative order; R.C. 2705.03.*

*Trial court did not abuse its discretion in summarily finding attorney in direct contempt for not wearing his mask, in violation of the court's administrative order requiring him to do so, when the violation occurred in the judge's presence and impeded the administration of justice; trial court abused its discretion in holding the attorney in contempt for not wearing his mask in the bailiff's presence outside the judge's chambers because the judge had no personal knowledge of the alleged act of contempt and thus was required to utilize the procedure set forth in R.C. 2705.03 before finding the attorney in contempt for that act.*

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**110837** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAMES CLAYTOR

Affirmed.

Mary J. Boyle, J., Sean C. Gallagher, A.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Aggravated murder; prior calculation and design; Taylor factors; murder; self-defense; aggravated robbery; theft; offense; simultaneity of offenses; R.C. 2911.01(A)(3); sufficient evidence; manifest weight of the evidence; motion to suppress; Franks hearing; prosecutorial misconduct.*

*Judgment affirmed. There is sufficient evidence to sustain defendant's convictions and his convictions are not against the manifest weight of the evidence. The defendant and victim knew each other and their relationship was strained. The two of them engaged in bank and unemployment scams. The defendant and victim exchanged death threats over the unemployment scam. The victim told the defendant that he was upset and coming to his house. The defendant drove past the victim and chose to confront the victim instead of driving away. The defendant then shot the victim five times. A plain reading of R.C. 2911.01(A)(3) reveals that the theft offense does not have to occur simultaneous to the serious physical harm. Defendant's motion to suppress was properly denied. Defense counsel elected not to request a Franks hearing and the search warrant was facially valid. The self-defense instruction is inapplicable to the case because the defendant created the situation giving rise to the affray, and the state did not commit prosecutorial misconduct.*

**110854** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LAW OFFICE OF CRAIG T. WEINTRAUB v HARVEY B. BRUNER, ET AL.

**110859** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LAW OFFICE OF CRAIG T. WEINTRAUB v HARVEY BRUNER, ET AL.

Affirmed and remanded.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Contingency fee contract; quantum meruit; contract interpretation; conflicting terms of contract; parol evidence; sufficiency of evidence; manifest weight of evidence; equitable remedy.*

*Attorney discharged from contingency fee contract had claim in quantum meruit against eventual settlement. Discharged attorney entered into representation agreement with client and then they entered into a contingency fee agreement. Discharged attorney testified as to the terms of the first representation agreement and*

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(Case 110859 continued)

**the parties' intent as to compensation. The trial court properly considered parole evidence at bench trial regarding the intent of the parties. The evidence at trial was sufficient to support verdict on quantum meruit claim, and the verdict and award of compensation were not against the manifest weight of the evidence. Court could consider totality of circumstances in fashioning an equitable award.**

**110883** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CHARLES ROBINSON, JR.

Affirmed.

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

**KEY WORDS: *Crim.R. 29 motion; sufficiency of the evidence; forgery by uttering; R.C. 2913.31(A)(3); theft; R.C. 2913.02(A)(3); endorsement of a check; circumstantial evidence; motion for mistrial; substantial rights are adversely or materially affected; reference to constitutional right to remain silent; curative instruction; overwhelming evidence of guilt; admission of evidence; exclusion of prior convictions; misleading the jury; prosecutorial misconduct; plain error; cumulative error.***

***The trial court properly denied defendant's Crim.R. 29 motion where the state presented sufficient evidence that defendant committed forgery by uttering and theft.***

***The trial court provided a curative instruction after the assistant prosecuting attorney erroneously referenced defendant's right to remain silent at trial. Defendant's subsequent motion for mistrial was correctly denied since the record showed the statement could be ignored and serious prejudice was not likely to occur.***

***The trial court's exclusion of a codefendant's conviction was not an abuse of discretion.***

***The state's incorrect recitation during closing arguments of one fact that was not presented during trial did not substantially affect the defendant's rights or adversely impact the outcome of the trial and did not constitute plain error.***

***Absent any merit to the defendant's first four assignments of error, the court found no basis to defendant's cumulative error claim.***

**110884** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JANE HANAK, ET AL. v KIMBERLY KRAUS, M.D., ET AL.

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Affirmed.

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

**KEY WORDS:** *Civ.R. 12(B)(6); motion to dismiss; medical malpractice; pro se; statute of limitations; R.C. 2305.113(A); savings statute; R.C. 2305.19(A); time-barred; de novo; untimely; local rule; Civ.R. 10(D)(2); affidavit of merit; good cause; extension of time; defective; motion to strike; factual allegations.*

*Upon a de novo review, determined the trial court did not err in dismissing a medical-malpractice complaint as untimely pursuant to Civ.R. 12(B)(6), R.C. 2305.113(A), and 2305.19(A). The alleged difficulties that the pro se plaintiffs encountered in e-filing their documents properly did not require the complaint to be deemed timely filed. The affidavit of merit was defective because it did not identify each defendant named in the complaint pursuant to Civ.R. 10(D)(2), and no extension of time was warranted because the action was time-barred. The appellees' motion to strike factual allegations in appellants' brief that were not part of the record was granted.*

**110918** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v DENNIS POINTER

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Crim.R. 32.1; petition for postconviction relief; motion to withdraw plea; manifest injustice.*

*The court of appeals affirmed the trial court's denial of appellant's motion to withdraw guilty plea. The motion did not include any evidentiary support to show a manifest injustice sufficient to permit the appellant to withdraw his nearly 30-year-old guilty plea.*

**110939** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
FAST TRACT TITLE SERVICES, INC. v DENVER BARRY

Vacated.

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

**KEY WORDS:** *Civ.R. 12(B)(6); motion to dismiss; fraud; specificity; piercing the corporate veil.*

*Trial court erred in denying defendant's Civ.R. 12(B)(6) motion to dismiss the complaint for failure to state a claim upon which relief*

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**could be granted where the plaintiff's underlying claim on its action for piercing the corporate veil was fraud but plaintiff did not plead fraud with particularity as required by Civ.R. 9(B).**

**110974** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MUSIAL OFFICES, LTD. v COUNTY OF CUYAHOGA

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *Law of the case; R.C. 2723.05; post-judgment interest; R.C. 5715.22.*

*The court of appeals affirmed in part, reversed in part and remanded the case to the trial court. The court found that the judgment in the amount of \$3,927,385.91 entered below was law of the case. The court further found that the judgment entry did not vacate the previous rulings of the trial court providing for oversight of the judgment proceeds and attorney fees. Finally, the court found that the award of post-judgment interest was not law of the case and so reversed the award of post-judgment interest and remanded the case to the trial court to enter judgment consistent with the opinion.*

**111098** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v RAMON GRAY

Affirmed.

Frank Daniel Celebrezze, III, P.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Petition for postconviction relief; R.C. 2953.21; res judicata; raised or could have raised issue on direct appeal; waived; evidence dehors the record; relevant to petition; operative facts; evidentiary hearing; supplement.*

*The trial court did not err in denying appellant's petition for postconviction relief and properly found that all of the claims raised in his petition were barred by res judicata.*

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**111154** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: T.J., ET AL.

Affirmed.

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

**KEY WORDS:** *Termination of parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.414; clear and convincing evidence; best interest of the children; abuse of discretion.*

*The juvenile court's judgment granting permanent custody to the agency was not against the manifest weight of the evidence. Further, the juvenile court did not abuse its discretion in finding that permanent custody was in the best interest of the children.*

**111257** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: A.A.-V.

Affirmed.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Permanent custody, best interest of the child.*

*Juvenile court's grant of permanent custody to children's services agency was supported by clear and convincing evidence where Father pled guilty to child endangering as a result of shaking his infant child, remained incarcerated during the pendency of the case, could not work on case-plan goals, and could not establish that he would be able to meet the child's basic and extensive special needs within a reasonable time.*

**111282** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ROBERT JOHNSON

**111283** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ROBERT DALE JOHNSON

Vacated and remanded.

Cornelius J. O'Sullivan, Jr., J., Sean C. Gallagher, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Community control; prison; suspended sentence; plain error; contrary to law.*

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**It is plain error for the trial court to sentence defendant to both community control and prison for the same count. Further, community control sanctions are directly imposed on a defendant and do not follow as a consequence of a suspended prison sentence. Appellee's sentence is contrary to law.**