

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**March 31, 2022**

**109359** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JEROME S. DAVIS

Affirmed.

Anita Laster Mays, P.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Reagan Tokes Act; constitutionality; consecutive sentences; R.C. 2929.14(C)(4).*

**Based on the authority established by this district's en banc holding in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, the challenges appellant advanced against the constitutional validity of the Reagan Tokes Law have been overruled. Additionally, the trial court did not err in sentencing the appellant to serve his sentence consecutively because the trial court made the necessary statutory findings in accordance with R.C. 2929.14(C)(4).**

**110217** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KATELYN REED

Affirmed.

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

**KEY WORDS:** *Guilty plea; R.C. 2967.271; the Reagan Tokes Law; felony; indefinite sentence; Due Process Clause; separation-of-powers doctrine; Sixth Amendment right to a fair trial; ineffective assistance of counsel; incompetency.*

**Counsel was not ineffective for failing to file a motion to determine defendant's competency when there is no indication in the record of the alleged incompetency. Defendant's medication and mental disorders are not evidence of incompetency. Defendant's indefinite sentence pursuant to the Reagan Tokes Law was not unconstitutional.**

**110232** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICAELA DURAND

Affirmed.

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

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(Case 110232 continued)

**KEY WORDS:** Reagan Tokes Law; R.C. 2953.08(G)(2)(b); R.C. 2929.11; R.C. 2929.12.

**Because the trial court stated that it considered all required factors of law, it satisfied its statutory requirements under R.C. 2929.11 and 2929.12. Further, appellant's sentence under the Reagan Tokes law is affirmed pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.**

**110271** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JAQUAN RANSOM

Affirmed.

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

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

***Defendant's sentence under the Reagan Tokes law is affirmed pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.***

**110344** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE A.V.

Affirmed.

Mary Eileen Kilbane, J., and Frank Daniel Celebrezze III, P.J., concur; Lisa B. Forbes, J., dissents (with separate opinion).

**KEY WORDS:** *Legal custody; Fifth Amendment; self-incrimination; abuse of discretion; invited error.*

***The trial court did not abuse its discretion when it declined to allow Mother's counsel to call Mother as a witness at the conclusion of the hearing when Mother had multiple prior opportunities to testify and declined. While the Fifth Amendment does not allow an individual to completely refuse to testify in juvenile court proceedings, the invited-error doctrine applies to preclude Mother from taking advantage of this error on appeal.***

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**110428** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
THE SCOTT FETZER COMPANY v AMERICAN HOME ASSURANCE COMPANY, INC., ET AL.

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Insurance coverage; bad faith; bifurcate; choice of law; discovery; privileged documents; attorney-client privilege.*

*Appellant appealed the trial court's journal entry ordering it to produce documents in a civil action arguing that the court used the wrong state's substantive law in a choice-of-law analysis and that disclosure of the privileged documents was improper. Appellee's bad-faith claim is classified as a tort and, therefore, we apply 1 Restatement of the Law 2d, Conflict of Laws, Section 145, to analyze which state's substantive law applies. After analyzing the four factors of 1 Restatement of the Law 2d, Conflict of Laws, Section 145, Ohio has the most significant relationship to the occurrence and the parties. Applying Ohio's substantive law, "in an action alleging bad-faith denial of insurance coverage, the insured is entitled to discover claims file materials containing attorney-client communications related to the issue of coverage." Boone v. Vanliner Ins, 91 Ohio St.3d at 213-214, 744 N.E.2d 154.*

*However, appellant did not identify which documents, reviewed by the trial court in camera, were allegedly improperly ordered to be disclosed or redacted. Appellant failed to make the documents at issue available to this court for review and failed to show how the court allegedly erred by ordering the production of documents under Ohio law.*

**110582** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ANTWUAN MITCHELL

Affirmed.

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

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

*Defendant's sentence under the Reagan Tokes Law is affirmed pursuant to this court's en banc decision in State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.*

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**110584** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
KEVIN BARCY v ST. VINCENT CHARITY MEDICAL CENTER, ET AL.

Affirmed.

Eileen T. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Declaratory judgment; manifest weight; equitable estoppel; breach of contract; unjust enrichment; representation; Medicaid; medical receivables; assignment.*

*The trial court's judgment was not against the manifest weight of the evidence and did not constitute the erroneous application of law.*

**110652** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TRUDIE NASO v VICTORIAN TUDOR INN, LLC, ET AL.

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Summary judgment; open and obvious; attendant circumstances.*

*Trial court properly granted summary judgment to appellees where the steps were open and obvious and there were no attendant circumstances to negate the application of the open-and-obvious doctrine. Accordingly, appellees had no duty to protect plaintiff from the danger.*

**110653** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CARL SANDERS

Affirmed.

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

**KEY WORDS:** *R.C. 2929.144; R.C. 2929.14; Reagan Tokes Act; indefinite non-life felony sentence; ripeness; due process; separation of powers.*

*The defendant has not demonstrated that the indefinite sentences imposed are unconstitutional.*

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**110672** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MICHELLE MASON v DIRECTOR OHIO DEPT. OF JOB & FAMILY SERVICES, ET AL.

Reversed and remanded.

Lisa B. Forbes, J.; Eileen A. Gallagher, J., concurs; Frank Daniel Celebrezze, III, P.J., dissents (with separate opinion).

**KEY WORDS:** *Unemployment compensation; just cause.*

*The evidence presented at the agency hearing did not support the agency's finding that the plaintiff knew about the policy for which she was fired.*

**110674** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ALAN RICE

Affirmed.

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

**KEY WORDS:** *Robbery; sentence; maximum; R.C. 2929.11; R.C. 2929.12; contrary to law; considered; financial sanctions; fine; ability to pay; R.C. 2929.19(B)(5); costs.*

*The maximum sentence imposed on a robbery count was not contrary to law. The prison term imposed was within the statutory range, and the record showed that the court considered the purposes of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. The trial court did not err in imposing a \$1,000 total fine or in considering appellant's ability to pay.*

**110717** PARMA MUNI. G CIVIL MUNI. & CITY  
JEREMY HALTER v DR. MICHAEL DAGOSTINO

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and James A. Brogan, J.,\* concur.

\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS:** *Dental malpractice; expert.*

*To establish a claim for dental malpractice, the plaintiff must establish, by expert testimony, the requisite standard of skill and*

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(Case 110717 continued)

**care of physicians in the medical community, the negligent failure of the defendant to render treatment in conformity with the standard and the proximate causation of the plaintiff's damages by the defendant. Appellant failed to present evidence necessary to establish a dental malpractice claim. The judgment of the Parma Municipal Court is affirmed.**

**110726** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v ALBERTO MEDINA

Affirmed.

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

**KEY WORDS: Postconviction relief; R.C. 2953.21; untimely; R.C. 2953.23; exceptions; jurisdiction.**

***The trial court properly dismissed appellant's petition for postconviction relief because the petition was untimely and no exception under R.C. 2953.23(A) applies. The trial court was without jurisdiction to consider an untimely petition for postconviction relief.***

**110736** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
5500 SOUTH MARGINAL WAY LLC, ET AL. v ERICK A. PARKER, ET AL.

Affirmed.

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

**KEY WORDS: Ohio Adm.Code 1301:8-7-02(E); Civ.R. 55; default; weight of the evidence; unjust enrichment; fraud.**

***The trier of fact did not lose its way in considering the credibility of the evidence presented in support of the damages.***

**110738** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v THEOPHOLIS HUNTER

Affirmed.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS: Reagan Tokes Law; indefinite sentence; constitutional challenges; due process; separation of powers; right**

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(Case 110738 continued)

to jury trial.

Pursuant to the en banc decision in *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, appellant's constitutional challenges to the Reagan Tokes Law are overruled.

**110785** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v BEVERLY THOMPSON

Reversed and remanded.

Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur; Sean C. Gallagher, A.J., concurs (with separate opinion attached).

**KEY WORDS:** *Community control sanction; R.C. 2929.15; 2929.16, 2929.18; contrary to law.*

*Offender was sentenced for the crime of aggravated assault, a felony of the fourth degree. The trial court was required to impose either a prison term or community control sanctions. The trial court sentenced offender to "time served" and ordered the offender to pay the costs of prosecution. The sentence of "time served" is not a community control sanction authorized by R.C. 2929.15 through 2929.19 and is thus contrary to law. Further, imposing costs of prosecution is not a community control sanction under R.C. 2929.19(A). Sentence is reversed, and the case remanded for resentencing.*

**110836** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN THE MATTER OF: L.J.R.

**110847** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN THE MATTER OF: L.J.R.

Affirmed.

Anita Laster Mays, P.J., Cornelius J. O'Sullivan, Jr., J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Permanent custody; R.C. 2151.414(B); R.C. 2151.414(D); best interest of the child; clear and convincing evidence; R.C. 2151.419; reasonable efforts.*

*The trial court's award of permanent custody to the agency was not against the manifest weight of the evidence and did not constitute an abuse of discretion. Due to the severity of the child's special needs, the child could not or should not be placed with the parents within a reasonable time and the parents were unable to remedy the grounds for removal. The child was in agency custody for almost four years and no relative or interested person was able care for the*

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(Case 110847 continued)

**child. The record reflects that the agency made reasonable efforts to prevent the removal of the child from the home or return the child to the home in pursuit of reunification. The grant of permanent custody was in the best interest of the child.**

**110882** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v JOHN BRADLEY, JR.

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and James A. Brogan, J.,\* concur.

\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS: Reagan Tokes Law; separation of powers; due process; right to jury trial; State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470.**

**Appellant contends that the indefinite sentence imposed under the Reagan Tokes Law violated the Ohio and United States Constitutions due process clauses, the principle of separation of powers, and appellant's right to trial by jury. However, based on this court's en banc decision in Delvallie, the court overrules those assignments and affirms the judgment of the trial court.**

**110915** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
GREGORY A. JONES, ET AL. v KARL DLUGOS, ET AL.

Affirmed.

James A. Brogan, J.,\* Sean C. Gallagher, A.J., and Lisa B. Forbes, J., concur.

\*(Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)

**KEY WORDS: Forfeiture; forcible entry and detainer; land installment contract; final appealable order; eviction; standing; de novo review; bankruptcy; divest of property interests; abandonment; schedule of assets and liabilities; judicial estoppel; abuse of discretion standard; and inadvertence or mistake.**

**The trial court did not err when it determined the defendants lacked standing to pursue a counterclaim that the defendants failed to list as an asset in their bankruptcy petition.**

**The trial court did not abuse its discretion when it found the defendants who failed to include an asset on their bankruptcy petition were judicially estopped from pursuing that asset in a later action.**



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**111144** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN THE MATTER OF: M.G.

Affirmed.

Eileen T. Gallagher, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

***KEY WORDS: Permanent custody; substance abuse; anger management; parenting; best interest; remedy; case plan; abuse of discretion; termination; parental rights; clear and convincing evidence; legal custody; relative; secure placement.***

***The juvenile court did not err by awarding permanent custody of the father's child to Cuyahoga County Division of Children and Family Services because the juvenile court properly engaged in the two-prong analysis prescribed by R.C. 2151.414 and clear and convincing evidence supported the court's decision granting permanent custody of the child to the agency.***