

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 6, 2022

**111062** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
CONSTANTINE KARABOGIAS v JOAN ZOLTANSKI

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS:** *Divorce; division of pension; QDRO; date of the termination of marriage.*

*The QDRO issued by the trial court is affirmed. It is within the trial court's discretion to select a date for distribution purposes regarding each marital asset in order to achieve an equitable division of marital property. Furthermore, there is no merit to appellant's claim that the QDRO improperly modified the terms of the judgment entry of divorce.*

**111212** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CLYDE SCOTT

Affirmed and remanded.

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

**KEY WORDS:** *Sentence; consecutive; R.C. 2929.14; nunc pro tunc; limited remand; resentencing.*

*Judgment affirmed. While the trial court initially miscalculated the aggregate sentence at the sentencing hearing, the court later clarified and articulated that the appellant's sentence amounted to an aggregate sentence of 21-years in prison. The trial court's comments on the record and in the sentencing entry confirm this. Therefore, appellant's sentence is 21 years in prison. With regard to the consecutive sentence, we find that the trial court engaged in the three-step analysis of R.C. 2929.14(C)(4) and we cannot "clearly and convincingly" conclude that the record does not support the trial court's consecutive-sentence findings. When the trial court fails to journalize its consecutive-sentence findings in its sentencing entry, the remedy is a remand to the trial court for the limited purpose of incorporating its consecutive findings into a nunc pro tunc sentencing entry.*

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**111224** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
GERALD WAYNE YOAK v UNIVERSITY HOSPITALS HEALTH SYSTEMS, INC., ET AL.

Affirmed in part, reversed in part, and remanded.

Lisa B. Forbes, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Summary judgment; notice pleading; Civ.R. 8(A); negligence; open-and-obvious doctrine; nuisance; comparative negligence.*

*The trial court erred by granting summary judgment in this negligence and qualified-nuisance case. Plaintiff tripped over a board that was keeping a door from shutting at the YMCA. The board was placed there by an employee of University Hospitals, who worked at the physical therapy center adjacent to the YMCA. University Hospitals owed plaintiff a duty, and there are genuine issues of material fact regarding whether University Hospitals breached that duty and whether plaintiff was comparatively negligent.*

**111236** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
N.E. MONARCH CONSTRUCTION, INC. v MORGANTI ENTERPRISE, INC., ET AL.

Affirmed in part and reversed in part.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *R.C. 2505.02(B)(4); interlocutory order; final, appealable order; motion to compel; attorney-client privilege.*

*Trial court's order compelling production of emails between appellants and counsel is reversed in part and affirmed in part. Emails between appellants and counsel that contain legal advice or were sent to obtain legal advice are confidential attorney-client communications protected by the attorney-client privilege. Emails between counsel for both parties are not protected attorney-client communications and must be produced.*

**111238** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BYRON NORRIS v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

**111383** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BYRON NORRIS v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

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Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Negligence; motion to dismiss for want of prosecution; Civ.R. 60(B); excusable neglect.*

*The trial court properly granted RTA's motion to dismiss for want of prosecution and denied appellant's Civ.R. 60(B) motion claiming his incarceration constituted excusable neglect. The docket reflects a drawn-out history of litigation and appellant's lack of participation preceded his incarceration. Under the circumstances of this case, the trial court properly found appellant's incarceration did not constitute excusable neglect. Its dismissal of the case with prejudice was not an abuse of discretion.*

**111271** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
DANNY TRIPLETT v UNIVERSITY HOSPITALS CLEVELAND MEDICAL CENTER, ET AL.

Reversed and remanded.

Cornelius J. O'Sullivan, Jr., J.; and Eileen A. Gallagher, J., concurs; Frank Daniel Celebrezze, III, P.J., dissents (with separate opinion attached).

**KEY WORDS:** *Civ.R. 26(B) discovery; de novo review; R.C. 2305.252; peer review privilege; R.C. 2305.25; peer review committee.*

*The trial court erred when it granted the appellee's motion to compel and denied the appellant's motion for a protective order in a discovery dispute over online training modules that the appellant/hospital had obtained from a third party for use by its quality assurance committee to improve patient care. The training modules were protected by peer review privilege.*

**111308** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v GLENN LAMAR NOWDEN

Affirmed.

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

**KEY WORDS:** *Plea colloquy; Crim.R. 11(C)(2)(a); maximum penalty; knowing, intelligent, and voluntary; consecutive sentence; R.C. 2929.14(C)(4); findings.*

*Appellant's convictions are affirmed. Appellant's pleas were knowing, intelligent, and voluntary. During the plea colloquy, the trial court informed appellant of the maximum sentence and fine on each count, and appellant replied that he understood. The trial*

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(Case 111308 continued)

**court was not required by Crim.R. 11(C)(2)(a) to inform appellant of the potential for discretionary consecutive sentencing. A review of the record reveals that the trial court made the required findings under R.C. 2929.14(C)(4) before imposing consecutive sentences.**

<b>111362</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v VICTOR BOBO			

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur.

***KEY WORDS: Guilty plea; intelligent, voluntary, and knowing; Crim.R. 11(C)(2)(a); prejudice; R.C. 2929.12(B)(2)(c); Reagan Tokes sentencing requirements; Reagan Tokes constitutionality.***

***Trial court erred in advising defendant that his mandatory sentence was eligible for good-time credit. However, where defendant failed to demonstrate that but for the error he would not have pleaded guilty, the plea must stand.***

***Trial court is required to give all the advisement under R.C. 2929.12(B)(2)(c). Failure to do so renders the sentence contrary to law requiring the trial court to appropriately advise the defendant.***

***Reagan Tokes Law is constitutional pursuant to the decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), overruling State v. Delvallie, 2021-Ohio-1809, 173 N.E.3d 544 (8th Dist.); State v. Daniel, 2021-Ohio-1963, 173 N.E.3d 184 (8th Dist.); State v. Sealey, 2021-Ohio-1949, 173 N.E.3d 894 (8th Dist.).***