

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 9

December 14, 2023

**112221** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
STEVEN D. MARRS v SABRINA E. MICKEL

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Irrelevant evidence; Evid.R. 401; Evid.R. 402; magistrate's decision; plain error; Civ.R. 53; Civ.R. 61; cumulative-error doctrine.*

*Where appellant did not claim that any evidence was improperly admitted by the magistrate in her objections to the magistrate's decision and did not raise any objection to any factual finding or legal conclusion in the magistrate's decision based on the admission of any such evidence, she forfeited appellate review of all but plain error as to the evidentiary challenges raised in appeal under Civ.R. 53(D)(3)(b)(iv). Appellate court need not analyze plain error where the appellant has failed to make a plain-error argument.*

*Cumulative-error doctrine did not apply where, because appellant did not challenge any of the trial court's determinations in the divorce proceedings on appeal, appellant failed to show that she was in any way harmed or prejudiced by any of the trial court's alleged evidentiary errors - regardless of whether those alleged errors were considered individually or together.*

**112283** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v RICHARD MARCUS LENARD

**112966** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v RICHARD MARCUS LENARD

Affirmed.

Frank Daniel Celebrezze, III, P.J., Lisa B. Forbes, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Leave to file a new-trial motion; post conviction; Crim.R. 33(A)(6); Crim.R 33(B); clear and convincing proof; unavoidably prevented; hearing.*

*Defendant-appellant's motion for leave to file a new-trial motion was properly denied because defendant-appellant failed to demonstrate by clear and convincing proof that he was unavoidably prevented from discovering and collecting evidence relating to one of the jurors from his trial. Additionally, the claims surrounding the juror have been considered and rejected by both this court and the trial court on multiple occasions, so res judicata applies. Because defendant-appellant did not demonstrate that his evidence was*

## CASE DECISION LIST

(Case 112966 continued)

**newly discovered or presented a strong probability that a new trial would yield a different result, the trial court also did not err in not holding a hearing on the motion.**

**112290** BOARD OF TAX APPEALS H Admin Appeal  
1277 WEST SIXTH LLC, ET AL. v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Board of tax appeals; request for remission of penalties; late payment; R.C. 5717.04; reasonable and lawful; R.C. 323.12(B); R.C. 5703.056(C).*

**The Board of Tax Appeals' decision denying appellant's request for remission of penalties was reasonable and lawful. The appellant did not demonstrate that it timely paid its 2019 property taxes pursuant to R.C. 323.12(B). Judgment affirmed.**

**112387** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MARVIN JOHNSON, JR.

**112462** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MARVIN JOHNSON, JR.

Affirmed.

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

**KEY WORDS:** *Aggravated robbery; robbery; theft; having weapons while under disability; Crim.R. 33; motion for a new trial; abuse of discretion; prosecutorial misconduct; closing arguments; ineffective assistance of counsel; cumulative error; sufficiency of the evidence; manifest weight of the evidence; App.R. 12(A)(2).*

**The trial court did not abuse its discretion in denying the appellant's motion for a new trial based on an isolated comment made by a witness. A comment made during closing arguments did not amount to prosecutorial misconduct, and defense counsel's decision not to object to this comment did not constitute ineffective assistance of counsel. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. There was no cumulative error.**

## CASE DECISION LIST

**112426** PARMA MUNI. C Criminal Muni. & City  
S/O, CITY OF BROOKLYN v DONALD MCMAHON

Vacated and remanded.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Decision of the magistrate; Crim.R. 19(D)(3)(a)(iii).*

**Magistrate's decision failed to comport with the requirements of Crim.R. 19(D)(3)(a)(iii). Additionally, inconsistencies between the charges listed on the citation, on the court file, and in the magistrate's decision raise questions as to what charge appellant was convicted on. Convictions vacated and case remanded for magistrate to file an order compliant with Crim.R. 19(D)(3)(a)(iii) and for the parties to file objections if they so choose.**

**112484** ROCKY RIVER MUNI. C Criminal Muni. & City  
CITY OF ROCKY RIVER v CRYEE S. SANFORD EL

Affirmed.

Michael John Ryan, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Failure to comply with appellate rules.*

**Judgment affirmed. Pro se appellant's failure to (1) provide any cogent argument in support of her assignment of error, (2) cite to the record, (3) provide relevant legal authority, and (4) make the transcript part of the record renders her assignment of error beyond our consideration.**

**112508** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
HAL FAB, LLC, ET AL. v RICHARD JORDAN, ET AL.

Reversed and remanded.

Eileen T. Gallagher, J., and Kathleen Ann Keough P.J., concur; Lisa B. Forbes, J., concurs in judgment only.

**KEY WORDS:** *Breach of contract; guaranty; fraud; pierce the corporate veil; attorney fees.*

**Trial court erred in piercing the corporate veil and holding employee of corporation personally liable for alleged fraud committed by corporation where there was no evidence of fraud or that the employee owned an interest in the corporation, was an**

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 4 of 9

(Case 112508 continued)

**officer of the corporation, or had the authority to bind the corporation by his actions.**

**Parol evidence was admissible to interpret alleged contract where it was written in response to an earlier writing that explained the circumstances for the subsequent document.**

**112545** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
NICK W. DOLBIN v KATHLEEN M. COLAHAN

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS: Magistrate's decision; objections; failure to file transcript; Civ.R 53; Loc.R. 27 of the Court of Common Pleas of Cuyahoga County, Domestic Relations Division; plain error.**

**Judgment affirmed. Appellant failed to file a transcript with his objections to the factual findings in the magistrate's decision. As a result, Civ.R. 53 provides that appellant waived the issue he raises on appeal and we decline to find plain error. Appellant has failed to argue and demonstrate that this is an "extremely rare case" in which exceptional circumstances exist warranting application of the plain error doctrine in order to prevent a manifest miscarriage of justice.**

**112562** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TYREE THOMAS

Affirmed.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur.

**KEY WORDS: Guilty plea; Crim.R. 32.1; Reagan Tokes Law; constitutionality.**

**The trial court did not abuse its discretion when it denied appellant's motion to withdraw his guilty plea. The record failed to establish that appellant received ineffective assistance of counsel when his lawyer did not advise him of the mandatory sentence, where both the prosecution and the trial court advised of the mandatory sentence during the plea, appellant was given an opportunity to ask questions or raise issues, and elected not to, and then entered a plea of guilty. Appellant failed to establish that but for counsel's deficient representation, he would not have entered a guilty plea.**

**Additionally, the trial court had the discretion to determine the type**

## CASE DECISION LIST

(Case 112562 continued)

of hearing necessary to address the motion to withdraw the guilty plea. The court did not abuse its discretion by hearing the argument of counsel. The court did not dispute the appellant's allegations but focused on whether, despite the alleged errors, the appellant voluntarily, knowingly, and intelligently entered a guilty plea.

The record does not establish that the trial court failed to consider the factors in favor of the appellant's motion to withdraw the plea.

Finally, the appellant did not object to the sentence before the trial court, challenge the constitutionality of the Reagan Tokes sentence, nor did the trial court affirmatively find that Reagan Tokes was constitutional. Accordingly, the appellant's second assignment of error challenging the trial court's finding of constitutionality and challenging the sentence need not be considered for the first time on appeal.

**112598** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MAYLON SIMS

Reversed and remanded.

Frank Daniel Celebrezze, III, P.J., Lisa B. Forbes, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *State appeal; R.C. 2953.08(B)(2); sentence contrary to law; Reagan Tokes Law; constitutional.*

*The trial court erred in finding that the Reagan Tokes Law was unconstitutional and declining to sentence appellee thereunder.*

**112626** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MAYSHAUN HALL

Affirmed.

Frank Daniel Celebrezze, III, P.J., Lisa B. Forbes, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Motion to withdraw guilty plea; Crim.R. 32.1; manifest injustice; advice of counsel; Crim.R. 11; plea colloquy; totality of the circumstances; prediction; ineffective assistance of counsel.*

*Judgment affirmed. The trial court did not err in denying defendant-appellant's motion to withdraw his guilty plea where the totality of the circumstances demonstrates that defendant-appellant failed to demonstrate that a "manifest injustice" occurred when his trial counsel erroneously predicted the amount of prison time that he would receive, but the trial court adequately informed him of the maximum sentence he could receive during the Crim.R. 11*

## CASE DECISION LIST

(Case 112626 continued)

colloquy. Defendant-appellant also claimed that he received ineffective assistance of counsel due to his counsel's erroneous prediction as to the prison term that defendant-appellant would receive. However, defendant-appellant failed to argue that but for his counsel's alleged ineffective assistance, he would have elected to proceed to trial, foreclosing our analysis of the issue.

**112645** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
THOMAS WILLIAMS v MICHELLE HUNG, ET AL.

Reversed and remanded.

Michael John Ryan, J., Anita Laster Mays, A.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Disqualification of an attorney; abuse of discretion.*

*An appellate court reviews a trial court's decision to disqualify an attorney for an abuse of discretion. Disqualification is a drastic measure that interferes with a party's right to choose his or her counsel and, therefore, should not be imposed unless absolutely necessary. Because the trial court neither held an evidentiary hearing on the motion to disqualify nor expounded on its reasons for the disqualification, its judgment is reversed and the case is remanded for further proceedings.*

**112656** CLEVELAND MUNI. G Civil Muni. & City  
MRN LIMITED PARTNERSHIP v CHRIS GAMAGE

Affirmed.

Michelle J. Sheehan, J., Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Complaint; misidentification of plaintiff; motion to substitute plaintiff; sanctions; abuse of discretion.*

*The trial court did not abuse its discretion in denying defendant's motion for sanctions where the plaintiff was misidentified in the complaint, which ultimately resulted in the dismissal of the complaint after the parties engaged in litigation for over 15 months seemingly unaware of the misidentification. The trial court found the misidentification to be a result of oversight and acted within its discretion in denying sanctions.*

## CASE DECISION LIST

**112682** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v RODERICK A. BYERS

Reversed, vacated, and remanded.

Anita Laster Mays, A.J., Kathleen Ann Keough, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Petty misdemeanor; effect of guilty plea; Crim.R. 11(B)(1); Crim.R. 11(E); plea knowingly, intelligently, and voluntarily made.*

*Where trial court completely failed to comply with Crim.R. 11(E) by failing to inform defendant that the effect of his guilty plea to petty misdemeanor was a complete admission of guilt as set forth in Crim.R. 11(B)(1), defendant's guilty plea was not knowingly, intelligently, and voluntarily made and his conviction was vacated.*

**112693** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v KURTIS FIELDS

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Petition for postconviction relief; res judicata; R.C. 2953.21; hearing; abuse of discretion.*

*Judgment affirmed. Appellant's petition for postconviction relief is barred by res judicata. The portions of the transcript relied upon by appellant were available to him at the time of trial and his direct appeal. Thus, the trial court did not abuse its discretion by denying the petition without an evidentiary hearing.*

**112705** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BRUCE LEWICKI v GRANGE INSURANCE COMPANY, ET AL.

Affirmed.

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

**KEY WORDS:** *Motion for summary judgment; Civ.R. 56; R.C. 2305.09(D); insurance; professional negligence; statute of limitations; discovery rule; delayed-damage rule; LGR Realty, Inc. v. Frank & London Ins. Agency, 152 Ohio St.3d 517, 2018-Ohio-334, 98 N.E.3d 241; Kunz v. Buckeye Union Ins. Co., 1 Ohio St.3d 79, 437 N.E.2d 1194 (1982); App.R. 12(A)(2); App.R. 16(A)(7); vicarious liability; respondeat superior.*

(Case 112705 continued)

**Judgment affirmed. No genuine issues of material fact remain as to appellant’s negligence, fraud, breach-of-implied-contract, detrimental-reliance, and breach-of-fiduciary-duty claims against the insurance agent; negligence, breach-of-implied-contract, and detrimental-reliance claims against the insurance agency; and vicarious-liability/ respondeat-superior, breach-of-implied-contract, and detrimental-reliance claims against the insurance company. Appellant’s claims against the insurance agent and agency are time-barred pursuant to the statute of limitations set forth in R.C. 2305.09(D). Because summary judgment was properly granted on the underlying claims challenged on appeal against the insurance agent and agency, the insurance company cannot be vicariously liable for any of those claims under the doctrine of respondeat superior. For that same reason, appellant’s argument that the insurance company is responsible for his alleged determinantal reliance on the insurance agent’s alleged negligent advice also fails. Finally, appellant failed to cite any legal authority or develop his argument that the insurance company is bound by an implied contract under the circumstances of this case.**

<b>112817</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOHNATHAN C. KUSINKO			

Vacated and remanded.

Eileen A. Gallagher, P.J., Michael John Ryan, J., and Sean C. Gallagher, J., concur.

**KEY WORDS: Conceded error; termination of community control; R.C. 2929.15(C); abuse of discretion; notice and opportunity to be heard.**

***Trial court abused its discretion in, sua sponte, terminating defendant’s community control without providing the state with notice and an opportunity to be heard regarding the issue. Appellee conceded the error.***

<b>112893</b>	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: Che.A., ET AL.			

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

**KEY WORDS: Legal custody; abuse of discretion; best interest; R.C. 2151.414(D) permanent custody factors.**

***Trial court did not abuse its discretion in granting legal custody of Mother’s minor children to Mother’s relatives where the record***



## CASE DECISION LIST

(Case 112893 continued)

**demonstrated, by a preponderance of the evidence, that Mother had not resolved her mental health, domestic violence, and anger management issues, as well as her inability to provide for her children's basic needs during the two years the cases were pending, and the relatives, who were already caring for the children, had demonstrated that they were willing and able to care for the children. The trial court is not required to weigh the R.C. 2151.414(D) permanent custody factors when it makes a best-interest determination in legal custody matters.**

**113014** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: B.S.

Affirmed.

Mary Eileen Kilbane, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

***KEY WORDS: Permanent custody; R.C. 2151.414; best interest; manifest weight of the evidence; guardian ad litem; written report; plain error.***

***The juvenile court's decision to grant the agency's motion for permanent custody was not against the manifest weight of the evidence where the court made appropriate findings pursuant to R.C. 2151.414 and those findings were supported by clear and convincing evidence. Mother's argument regarding the GAL's failure to submit a written report is reviewed for plain error where Mother failed to object, or participate in the proceedings at all, in the trial court. The GAL fulfilled his duties, and the lack of a written report does not constitute plain error.***