

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 8

January 12, 2023

**111032** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BIZFUNDS LLC v JETMO, INC. DBA MONROE TRANSMISSION, ET AL.

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, A.J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *Summary judgment; genuine issue of material fact; judgment on the pleadings; punitive damages; attorney fees.*

*The trial court did not err by granting the appellee's motion for summary judgment because the appellants have not demonstrated there are any genuine issues of material fact. The trial court did not err by denying the appellants' motion for judgment on the pleadings because Michael engaged in fraud. The award of punitive damages and attorney fees was proper against Michael and Jetmo only, and the trial court did not abuse its discretion. However, the trial court erred when it failed to dismiss the claims against Laura and Kleen because Laura was not a party to the contract or engaged in the fraudulent behavior in concert with Michael.*

**111256** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: J.S.

**111258** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: M.S.

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Permanent custody; R.C. 2151.414; manifest weight; abuse of discretion; best interest of the child.*

*Judgment affirmed. When proceeding on a motion for permanent custody, the juvenile court must satisfy the two-prong test set forth in R.C. 2151.414 before it can terminate parental rights and grant permanent custody to the agency. The juvenile court must find by clear and convincing evidence that (1) at least one of the conditions set forth in R.C. 2151.414 (B)(1)(a) through (e) applies, and (2) it is in the best interest of the child to grant permanent custody to the agency.*

*The record in the instant case demonstrates that the children could not be placed with Mother within a reasonable period of time and Mother failed to complete her case plan, failed to consistently submit to drug screen requests, and failed to follow through with mental health services. Alleged Father never engaged in any case*

## CASE DECISION LIST

(Case 111258 continued)

**plan services. Both children were born premature, both tested positive for marijuana, and both had resultant medical challenges. One child had unimaginable medical challenges and neither Mother nor Father availed themselves to receive training to care for the child's extensive medical needs.**

**Accordingly, clear and convincing evidence supports the juvenile court's judgment granting permanent custody of the children to the Cuyahoga County Division of Children and Family Services.**

**111296** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v RAUL PEREZ

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: Breach of plea agreement; plain error; Reagan Tokes as applied to consecutive sentences and constitutionality; R.C. 2929.144(B)(2).**

***Where appellant failed to object to alleged breach of plea agreement before the trial court, he waives all but plain error. Further, when plain error is not raised before the court of appeals, the court is not required to address it.***

***Trial court properly added indefinite sentences pursuant to R.C. 2929.144(B)(2) to each of appellant's cases. Had the legislature intended to include indefinite prison terms in separate cases when calculating consecutive sentences, it could have done so, but did not.***

***Finally, appellant raises a constitutional challenge to the Reagan Tokes Law. However, we have found the law constitutional State v. Delvallie, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470, and likewise await the Supreme Court's final determination.***

**111348** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KENNETH B. GRAVES

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: Constitutionality of the Reagan Tokes Law; indefinite sentence.**

***The trial court properly imposed an indefinite sentence pursuant to the Reagan Tokes Law, and this court overruled appellant's***

(Case 111348 continued)

**challenges to the constitutionality of the Reagan Tokes Law en banc in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).**

**111367** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN THE MATTER OF: T.N.R.

Affirmed.

Mary J. Boyle, J., and Michelle J. Sheehan, J., concur; Anita Laster Mays, A.J., dissents (with separate opinion attached).

**KEY WORDS:** *Juvenile; sufficiency of the evidence; manifest weight of the evidence; complicity; motion to suppress; videotaped statement; Miranda rights; coercion; involuntary; ineffective assistance of counsel.*

**Judgment affirmed. The failure to file a suppression motion does not constitute per se ineffective assistance of counsel. Even when there is some evidence in the record to support a motion to suppress, an appellate court presumes that defense counsel was effective if defense counsel could reasonably have decided that the motion to suppress would have been futile. In the instant case, the indicia of involuntariness and coercion are not present. The appellant turned 18 years old a few days before she was arrested. She appeared coherent and stable in the video. She was conscious the entire time and did not slur her speech or appear to be under the influence of any medication or substance. The questioning by the officer lasted approximately 45 minutes. There is nothing to suggest that the appellant's state of mind was altered. The appellant was able to write her statement in a notepad. In addition, the officers did not prevent the appellant from receiving any medical treatment while questioning her. Therefore, we decline to find that the appellant's statement was involuntary or coerced based on the totality of the circumstances and the foregoing case law. We cannot say that a motion to suppress the statement would have been successful. Furthermore, there is sufficient evidence in the record to sustain appellant's convictions on a complicity theory and her conviction are not against the manifest weight of the evidence. The record demonstrates that the appellant was more than just merely present. She was aware of and involved in the theft of the victim. She initiated the marijuana sale and knew that a gun was involved, that cash was taken, and that the victim was assaulted. The appellant did not attempt to stop her boyfriend from entering the victim's car, nor did she try to leave.**

## CASE DECISION LIST

**111370** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CARLOS J. MCCOLLUM

Affirmed.

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

**KEY WORDS:** *Motion for mistrial; jury instructions; peremptory challenge; sufficiency of the evidence; aggravated murder; prior calculation and design; aggravated robbery; robbery; identity; manifest weight of the evidence; constitutionality of the Reagan Tokes Act.*

*Defendant's convictions for aggravated murder and associated offenses are affirmed. Eyewitnesses saw defendant shoot the victim and beat him in the face and head with a claw hammer. The defendant was arrested after coming out of the house with the shotgun and claw hammer. Defendant's emotional outburst during opening arguments cannot be the basis for a mistrial.*

**111394** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
DANA RICHIE v THE HOME DEPOT

Affirmed.

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

**KEY WORDS:** *Summary judgment; constructive notice.*

*The trial court did not err in granting the appellee's motion for summary judgment because the appellant did not demonstrate that the appellee had constructive notice of any defects of the PVC pipes.*

**111399** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
AUDREY BUSKIRK v ERIK K. BUSKIRK

Affirmed.

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

**KEY WORDS:** *Divorce; allocation of debt and assets; child support; extracurricular activities and fees; mental health; retirement account; guardian ad litem fees.*

*In a divorce proceeding, trial court did not abuse its discretion in*

## CASE DECISION LIST

(Case 111399 continued)

**allocating the parties' marital debt and assets, ordering that Husband pay Wife child support, not considering the children's extracurricular activities and fees when calculating child support where no evidence of any extracurricular activities was offered, not considering the mental health of the parties and children in rendering the divorce decree where their mental health was never placed into issue, ordering the sale of the marital home, telling Husband that he could not take money from his retirement account during the pendency of the divorce proceedings, and allocating payment for the guardian ad litem fees equally between Husband and Wife.**

**111419** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CLEVELAND POLICE PATROLMEN'S ASSOCIATION, ET AL. v CITY OF CLEVELAND, ET AL.

Reversed and vacated.

Sean C. Gallagher, P.J., Anita Laster Mays, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS: R.C. Chapter 2721; declaratory relief; civil service commission; disciplinary grievance procedure; binding arbitration.**

***The decision of the trial court is reversed. The CPPA cannot use the Declaratory Judgment Act to circumvent binding contractual and administrative procedures, and because the relief the CPPA sought is not contemplated under R.C. Chapter 2721, the trial court should have dismissed the action.***

**111423** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CHRISTIAN BURKS

Affirmed.

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

**KEY WORDS: Guilty plea; Crim.R. 11; knowing, intelligent, voluntary; recommended sentence; ineffective assistance of counsel; presentence investigation.**

***Appellant's guilty plea was knowing, intelligent, and voluntary where the record demonstrates that the trial court complied with Crim.R. 11 and conducted a thorough plea colloquy. The trial court was not required to explicitly ask appellant whether any threats or promises had been made in exchange for his plea. Nothing in the record supports appellant's assertion that he was promised an eight-year sentence. Trial counsel was not ineffective where the terms of the plea agreement were extensively explained to appellant. The use of a presentence investigation from a prior case does not constitute ineffective assistance of counsel.***

## CASE DECISION LIST

**111442** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KAMILLE C. WHITE

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Sentencing; Reagan Tokes Law; felony; second degree; indefinite sentence; constitutional; right to a jury trial; separation-of-powers doctrine; due process.*

**Affirmed.** *Appellant's indefinite sentence imposed pursuant to the Reagan Tokes Law does not violate her constitutional rights.*

**111496** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ANTHONY E. HOWARD

Reversed and remanded.

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

**KEY WORDS:** *Reagan Tokes Law; S.B. 201; indefinite sentence.*

**The trial court erred by not imposing an indefinite sentence pursuant to the Reagan Tokes Law.**

**111520** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE v KATHLEEN TALLIERE, ET AL.

Affirmed.

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

**KEY WORDS:** *Foreclosure; standing; in rem; constructive possession; holder; note; summary judgment; preponderance of the evidence.*

**Judgment affirmed.** *The trial court properly granted the bank summary judgment on its in rem foreclosure claim because no genuine issue of material fact exists. The bank had standing and was the holder of the note, which had a blank endorsement at the time the case was filed. The bank further demonstrated that it was the holder of the note through constructive possession. Moreover, in a typical civil case, the degree of proof is a mere preponderance of the evidence.*

## CASE DECISION LIST

**111569** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
FIFTH THIRD MORTGAGE COMPANY v BRYON K. MCELROY

Reversed and remanded.

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

**KEY WORDS:** *Foreclosure; distribution of excess funds; mechanics' lien; legitimate lien; valid lien; sufficient evidence; final appealable order; and foreclosure order.*

*The trial court abused its discretion when it granted a motion for distribution of excess funds from the foreclosure sale to a holder of a mechanics' lien without first holding a hearing or requiring the submission of evidence to prove the legitimacy of the lien. The matter is reversed and remanded and the trial court will conduct a hearing where the parties may introduce evidence and present arguments on the validity of the mechanics' lien.*

**111591** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KATO LAWS

Affirmed in part; reversed in part; remanded.

Mary J. Boyle, J., and Lisa B. Forbes, J., concur; Kathleen Ann Keough, P.J., concurs in judgment only (with separate opinion).

**KEY WORDS:** *Reagan Tokes; sentence; constitutionality; R.C. 2929.19(B)(2)(c); notification; advisement.*

*Judgment affirmed in part, reversed in part, and remanded. Appellant's sentence is not unconstitutional under the Reagan Tokes Law. The trial court did not give appellant all the advisements required by R.C. 2929.19(B)(2)(c). The matter is remanded for resentencing to provide all the advisements required by R.C. 2929.19(B)(2)(c).*

**111748** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE R.H., ET AL.

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Permanent custody; R.C. 2151.414; manifest weight; abuse of discretion; best interest of the child.*

(Case 111748 continued)

**Judgment affirmed. When proceeding on a motion for permanent custody, the juvenile court must satisfy the two-prong test set forth in R.C. 2151.414 before it can terminate parental rights and grant permanent custody to the agency. The juvenile court must find by clear and convincing evidence that (1) at least one of the conditions set forth in R.C. 2151.414 (B)(1)(a) through (e) applies, and (2) it is in the best interest of the child to grant permanent custody to the agency.**

**The record in the instant case demonstrates that the children could not be placed with Mother within a reasonable period of time and Mother failed to complete her case plan, failed to consistently submit to drug screen requests, continued to test positive for illicit drugs, and failed to follow through with mental health services. Alleged Father never engaged in any case plan services.**

**Accordingly, clear and convincing evidence supports the juvenile court's judgment granting permanent custody of the children to the Cuyahoga County Division of Children and Family Services.**

<b>111764</b>	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
---------------	-------------------------	---	------------------------------

IN RE: M.K.L.

Affirmed.

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

***KEY WORDS: Magistrate's decision; transcript; shared parenting; objections.***

***Juvenile court did not abuse its discretion in approving and adopting the magistrate's decision awarding shared parenting to father. Mother failed to timely file a transcript of the proceedings with the juvenile court; thus, the court was in its discretion to adopt the magistrate's findings. As such, this court was also precluded from considering the transcript.***