

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 26, 2023

**107374** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DELVONTE PHILPOTTS

Vacated and remanded.

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

**KEY WORDS:** *Having weapons while under disability; R.C. 2923.13(A)(2); constitutionality; New York State Rifle & Pistol Assn. v. Bruen; remand.*

*The trial court's decision finding R.C. 2923.13(A)(2) constitutional is vacated, and this case is remanded to the trial court for the parties to develop the relevant record so that the trial court can apply the correct burden of proof and standard of review set forth in Bruen.*

**110834** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN THE MATTER OF: L.P.

**110835** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE Y.R.

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Adjudicatory hearing; final appealable order; abuse of discretion; permanent custody; best interests of child determination; CCDCFS; R.C. 2151.414; clear and convincing evidence; ineffective assistance of counsel.*

*Judgment affirmed. Father challenges the juvenile court's adjudicatory ruling, but failed to appeal this final order. As a result, this court's review is limited to issues that arose after the adjudication order. 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 Father within a reasonable period of time and Father failed to demonstrate that he would not continue to abuse or neglect his children. Accordingly, the court's decision to grant permanent custody is supported by clear and convincing evidence in the record.*

## CASE DECISION LIST

**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 Michael John Ryan, J., concur.

**KEY WORDS:** *Reconsideration; divorce; division of pension; QDRO; equity.*

*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.*

**111263** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v GIANNI A. GRAY

Affirmed.

Anita Laster Mays, A.J., and Mary J. Boyle, J., concur; Michelle J. Sheehan, J., concurs in judgment only.

**KEY WORDS:** *Hearsay testimony; confrontation clause; alibi testimony; Batson challenge.*

*The trial court did not err or violate the appellant's right to confrontation in the admission of testimony to explain the conduct of a police officer's investigation of a crime. The trial court did not err in excluding testimony that was deemed irrelevant to the case because it was not being used as alibi testimony. The trial court did not err in determining that the state's rationale for using a peremptory challenge on an African-American juror was race neutral after the appellant's Batson challenge.*

**111295** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
ANDREA PARRA v FRANK G. JACKSON, ET AL.

Affirmed in part, reversed in part, and remanded.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Law enforcement investigatory privilege; subpoena; prosecutor; file; Frankenhauser factors; de novo; in camera; compelling need; public's interest.*

## CASE DECISION LIST

(Case 111295 continued)

**The trial court erred in part when it denied the prosecutor's office a protective order over its files related to open, ongoing cases and investigations. Pursuant to a de novo in camera inspection of the files at issue, we find that the plaintiff-appellee has not demonstrated a compelling need that outweighs the public's interest in keeping the vast majority of the documents within the prosecutor's files confidential. Judgment affirmed in part and reversed in part.**

**111527** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DOMINIC C. DICKSON

Affirmed.

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

**KEY WORDS: Enforce subpoena; stipulate at trial; ineffective assistance of counsel; stipulated testimony; trial strategy; and failure to call a witness.**

***The trial court did not err when it accepted a report stipulated to by both parties rather than requiring the drafter of the report to present live testimony. The appellant was not subject to ineffective assistance of counsel when defense counsel introduced a stipulated report rather than live witness testimony. Further, defense counsel's failure to call two witnesses at trial was not ineffective assistance of counsel. Defense counsel's decision not to call the two witnesses amounted to trial strategy, and the record shows the witness testimony would not have reasonably resulted in a different outcome at trial.***

**111529** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
A.A. v Z.A.

Affirmed.

Mary J. Boyle, J.; Kathleen Ann Keough, J., concurs; Frank Daniel Celebrezze, III, P.J., concurs in judgment only.

**KEY WORDS: R.C. 2903.214; civil stalking protection order; Civ.R. 65.1; objection; failure to file.**

***Appeal is affirmed. Under Civ.R. 65.1(G), appellant had to timely file written objections to the trial court's adoption of the magistrate's granting of a civil stalking protection order prior to filing his appeal. Appellant failed to file any objection. Without timely filed objections, appellant may not challenge the trial court's judgment on appeal.***

## CASE DECISION LIST

**111543** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DAVID WILSON

Affirmed; remanded for resentencing.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Aggravated assault; felonious assault; domestic violence; allied offenses; serious physical harm; sufficiency of evidence; manifest weight of evidence; self-defense.*

*Trial court properly found defendant guilty of aggravated assault where it first found him guilty of felonious assault beyond a reasonable doubt and then found he proved the mitigating factor of provocation to find him guilty of aggravated assault; defendant's convictions for aggravated assault and domestic violence were allied offenses that should have merged for sentencing; defendant's conviction for aggravated assault was supported by sufficient evidence where the state presented evidence that the victim suffered serious physical harm; defendant could not claim that he acted in self-defense where he was at fault in creating the situation that led to the altercation.*

**111575** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
DANTE DAVIS v ANDREW YUSPEH, ET AL.

Reversed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Final appealable order; R.C. 2505.02(4); provisional remedy; privileged matter; Civ.R. 12(F) motion to strike; uncertified grievance; Gov.Bar R. V(8).*

*Trial court's order denying appellants' Civ.R. 12(F) motion to strike privileged matter from the plaintiff's complaint was a final appealable order under R.C. 2505.02(4); trial court's order was reversed because plaintiff's quotations in his complaint from a grievance committee's letter dismissing his grievance against defendant attorney and the attachment of the letter to his complaint violated the confidentiality provisions of Gov.Bar R. V(8) regarding public access to attorney disciplinary documents and proceedings involving uncertified grievances.*

## CASE DECISION LIST

**111581** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v A.K.H.

Affirmed.

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

**KEY WORDS:** *Expungement; seal records; R.C. 2953.31; R.C. 2953.32; equal protection violation.*

**The trial court did not err when it found appellant did not qualify as an eligible offender under R.C. 2953.31 and denied appellant's motion to seal his prior convictions.**

**111600** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KATRON GRAYS

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *Crim.R. 11; mandatory; indefinite sentence; felony; knowingly; plea; advisement; maximum penalty; good-time credit; earned credit; statute; irreconcilable; special provision; general provision; manifest intent; Reagan Tokes Law; constitutional; due process; separation of power; right to a jury trial; ineffective assistance of counsel; prejudice; notice; sentencing.*

**The trial court did not make an incorrect statement of law by advising the defendant that he was eligible to earn a reduction in his minimum prison term if he demonstrates exceptional conduct while incarcerated or an adjustment to incarceration. Trial counsel was not ineffective for failing to object to the court's imposition of an indefinite sentence pursuant to the sentencing structure enacted by the Reagan Tokes Law, which has been deemed constitutional. The trial court failed to fully comply with the notification requirements of R.C. 2929.19(B)(2)(c) at the time of sentencing.**

**111743** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN THE MATTER OF: J.A.

Affirmed.

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

**KEY WORDS:** *Delinquency; sexual imposition; R.C. 2907.06(A)(1); force; threat of force; sufficiency of the evidence; manifest weight.*

(Case 111743 continued)

The juvenile court’s adjudication of delinquency was supported by sufficient evidence and was not against the manifest weight of the evidence. The juvenile was found delinquent for committing an act at his high school that would constitute sexual imposition under R.C. 2907.06(A)(1). A female student testified that a male student - who was a stranger to her - grabbed her breast in a hallway without consent as she was leaving the school at the end of the school day. A school resource officer testified that a school security employee identified the juvenile as matching the description of the perpetrator recorded on surveillance footage. The juvenile admitted to touching the victim inappropriately when questioned and said he had no reason for touching the victim’s breast.

The state did not need to prove that the juvenile compelled the sexual contact by force or threat of force. The type, nature and circumstances of the incident supported a reasonable inference that the juvenile’s act was for the purpose of sexual arousal or gratification. There was nothing in the record to indicate that anything occurred that would have led the juvenile, who was 17 years old, to conclude that it would not be offensive to grab the breast of a girl he had never met and never spoken to in a school hallway while she was headed home after classes. While the victim could not identify the juvenile as the person who touched her, the other evidence readily supported that the juvenile was the person who touched her. The juvenile pointed to no inconsistencies in the evidence.

**111765** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: C.V., ET AL.

Affirmed.

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

**KEY WORDS:** *Abuse of discretion; permanent custody; clear and convincing evidence; motion for a continuance.*

*The trial court did not abuse its discretion in finding that clear and convincing evidence support granting permanent custody of the appellant’s children to CCDCFS. The trial court did not abuse its discretion by denying appellant’s motion for a continuance.*

**111767** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: B.D.

Affirmed.

Michael John Ryan, J., Anita Laster Mays, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Termination of parental rights; child cannot be placed with either parent within a reasonable time or should not be placed with parents; permanent custody in child's best interest; motion to continue. The juvenile court did not abuse its discretion by denying father's request for a continuance of the trial. The trial had already been continued to allow father additional time to bond with the child. The juvenile court's judgment granting the agency permanent custody of the child was not against the manifest weight of the evidence. All of the court's findings under R.C. 2151.414(B)(1) were supported by clear and convincing evidence. Further, the court's best interest findings under R.C. 2151.414(D)(1) were supported by clear and convincing evidence.*

**111825** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE J.M.P.

Affirmed.

Mary J. Boyle, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Civ.R. 56; summary judgment; de novo; shared parenting plan; contract interpretation; intent.*

**Judgment affirmed.** *The trial court properly granted Mother's motion for summary judgment. Under a plain reading of the shared parenting agreement, the parties agreed to raise J.M.P. in the Catholic religion, with Mother having the option to send J.M.P. to St. Paschal, and if Mother decides to do so, Father will pay one half of J.M.P.'s tuition at St. Paschal. This language clearly demonstrates that the parties intended to raise their child in the Catholic religion and contemplated sending him to Catholic school, and Mother, as the sole residential parent for school purposes, decides where J.M.P. is enrolled in school.*