

September 28, 2023

**111810** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
MELISSA LA SPISA v GREGG C. LA SPISA

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, A.J., Mary Eileen Kilbane, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *R.C. 3105.171; de facto termination date; property division; distributive awards; R.C. 3105.18; spousal support; Evid.R. 611; limitation of cross-examination; R.C. 3105.73; attorney fees.*

*The trial court's selection of a de facto termination date based on the totality of the circumstances was supported by the record. The trial court's classification of marital and separate property was not against the manifest weight of the evidence and the division does not reflect that the trial court abused its discretion. The trial court's distributive award for appellant's faux nuptials during the marriage, and tax liability is supported by the record. The trial court's award of spousal support does not constitute an abuse of discretion.*

*The trial court's decision regarding the allocation of the flood proceeds was against the manifest weight of the evidence.*

**111939** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v QUINCY HUBBARD

Affirmed.

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

**KEY WORDS:** *Motion to sever; joinder; plain error; hearsay; adoptive admission; statement against interest; sufficiency of the evidence; manifest weight of the evidence; felonious assault; sentence; unindicted conduct; Reagan Tokes Law; constitutional; State v. Hacker, Slip Opinion No. 2023-Ohio-2535.*

*Judgment affirmed. The trial court did not abuse its discretion by denying Hubbard's motion to sever. Hubbard failed to renew his motion at the close of all the evidence and waived all but plain error on appeal. Howard's testimony of what Hubbard said to him is admissible as an adoptive admission, and as a result, Hubbard has failed to demonstrate plain error by the joinder of his trial. Furthermore, Hubbard's felonious assault conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. Howard's testimony provided specific details, which were corroborated by other evidence, including the DNA evidence, the surveillance videos, the cell phone records, and the history of bad blood between Moore and Price and Hubbard. Lastly, the*

## CASE DECISION LIST

(Case 111939 continued)

**sentencing transcript as a whole reflects that Hubbard was not sentenced solely on the acquitted conduct and the Ohio Supreme Court, in *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535, recently found the Reagan Tokes Law to be constitutional.**

**111969** BOARD OF TAX APPEALS H Admin Appeal  
AHIP OH CLEVELAND PROPERTIES LLC v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

**KEY WORDS: Board of Tax Appeals, reasonable and lawful, rebuttable presumption, recent, arm's-length sale, deed, conveyance-fee statement, appraisal evidence, true value.**

***The Board of Tax Appeals' decision determining the value of the subject property according to the recent, arm's-length sale is reasonable and lawful. The appellee provided a deed and conveyance fee statement from the 2017 sale of the subject property, which created a rebuttable presumption that the sale price is the true value of the property. Appellant presented appraisal evidence to rebut the presumption and lower the value of subject property for tax year 2018. The board of tax appeals considered the evidence and determined that the appellant did not rebut the presumption in favor of the recent, arm's-length sale price.***

***Judgment affirmed.***

**112070** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
MELANIE DELIGIANIS v PAUL KRIWINSKY

Dismissed.

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

**KEY WORDS: Civ.R. 4; Civ.R. 75; Loc.R. 19; motion to modify child support; lack of personal jurisdiction.**

***The trial court properly dismissed appellant's motion to modify child support for lack of personal jurisdiction. Appellant failed to perfect service pursuant to Civ.R. 4, Civ.R. 75, and Loc.R. 19.***

## CASE DECISION LIST

**112089** PARMA MUNI. C Criminal Muni. & City  
CITY OF PARMA v DEREK PEROTTI

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Motion to suppress evidence; driving under the influence; field sobriety tests; reasonable suspicion; probable cause to arrest.*

*Trial court did not err in denying motion to suppress evidence used to convict defendant of OVI offenses. Considering the totality of the circumstances, officer had a reasonable suspicion, based on articulable facts, that defendant was impaired sufficient to support administration of field sobriety tests and had probable cause to arrest defendant for OVI.*

**112199** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: E.S., JR.

**112206** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: E.S., JR.

Vacated.

Anita Laster Mays, A.J.; Lisa B. Forbes, J., concurs with majority opinion and separate concurring opinion; Michael John Ryan, J., concurs (with separate opinion).

**KEY WORDS:** *Lack of jurisdiction; void judgment; action inconsistent with pending appeal; R.C. 2151.23(H).*

*The juvenile court's order dismissing the state's motion for discretionary transfer of predicate offenses for the manslaughter count pending appeal in the Ohio Supreme Court for want of prosecution was inconsistent with the pending appeal.*

**112236** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v DESIREE JONES

Affirmed.

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

**KEY WORDS:** *Crim R. 11, plea; petty misdemeanor; restitution hearing; merger.*

## CASE DECISION LIST

(Case 112236 continued)

The trial court complied with Crim.R. 11 when appellant pled guilty to a second-degree misdemeanor petty offense. The trial court informed appellant of the effect of her plea by telling her that a plea of guilty is a complete admission of guilt. The trial court held a separate restitution hearing, heard from both the victim and appellant, and its order of restitution is supported by the evidence. The appellant's offenses do not merge. Appellant pleaded guilty in municipal court in this case before she was charged with separate offenses, which occurred months later than the offense in this case, in common pleas court.

**112291** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
M.K. v R.K.

Reversed and remanded.

Michael John Ryan, J., and Mary J. Boyle, J., concur; Eileen T. Gallagher, P.J., dissents (see separate opinion).

**KEY WORDS:** *Interlocutory appeal; R.C. 3109.04(D)(2) certification to juvenile court; final, appealable order; best-interest determination; unsuitability; GAL; cross-examination.*

*The domestic relations court's judgment certifying the allocation of parental rights and responsibilities of a minor child under R.C. 3109.04(D)(2) is a final, appealable order because it affects a substantial right in a special proceeding.*

*R.C. 3109.04(D)(2) requires a best-interest determination, which the trial court failed to make. Further, the trial court did not make an appropriate unsuitability finding.*

*The trial court's reliance on the GAL's report without affording the parties the opportunity to cross-examine the GAL was an abuse of discretion.*

**112292** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v PORSHE CHANDLER

Affirmed.

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

**KEY WORDS:** *Sufficiency, manifest weight, credibility, aggravated robbery, robbery, grand theft.*

*Judgment affirmed. Defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. The evidence presented at trial demonstrates that*

## CASE DECISION LIST

(Case 112292 continued)

**defendant instigated the fight, got into the victim's car, locked it, and proceeded to flee the scene with the victim's belongings in the car, all while fighting with the victim as she was on the hood of the car.**

**112304** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v EMANUEL HOWARD

Affirmed.

Michael John Ryan, J., Anita Laster Mays, A.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: Reagan Tokes Law; separation-of-powers doctrine; the right to a jury trial; the right to due process; constitutional.**

***On July 26, 2023, the Ohio Supreme Court issued its decision in State v. Hacker, Slip Opinion No. 2023-Ohio-2535, finding the Reagan Tokes Law constitutional, and determining the law does not violate the separation-of-powers doctrine, the right to a jury trial, and the right to due process. The arguments presented in this case do not present novel issues or any new theory challenging the constitutional validity of any aspect of the Reagan Tokes Law left unaddressed by the Ohio Supreme Court's decision in Hacker. Accordingly, pursuant to Hacker, the defendant's assignment of error is overruled.***

**112353** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MALIK JUSTIN RODGERS

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Michael John Ryan, J., concur.

**KEY WORDS: Felony sentencing; R.C. 2929.12 factors; impartiality of the trial court.**

***The defendant's 30-month prison sentence is not contrary to law. It is within the statutory range and the record indicates that the trial court considered the felony sentencing statutory factors. The defendant failed to show that the trial court was neither neutral nor impartial in sentencing to less than the maximum and concurrent prison terms.***

## CASE DECISION LIST

**112487** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JEFFREY BURGESS

Affirmed.

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

**KEY WORDS:** *Breaking and entering; attempted theft; guilty plea; Crim.R. 11; maximum potential penalty; Crim.R. 32; right to allocution; victim-impact statements; abuse of discretion; ineffective assistance of counsel.*

*The trial court did not commit prejudicial error by failing to inform appellant of the possibility of consecutive sentences in an unrelated pending case from a different jurisdiction. The trial court did not deny appellant the right to allocution where appellant addressed the court and victim at his sentencing hearing. The trial court did not commit plain error or abuse its discretion when it allowed a city councilwoman and community member to address the court at sentencing. The appellant did not receive ineffective assistance of counsel when his trial counsel did not object to the victim-impact statements at sentencing.*

**112524** CLEVELAND HTS. MUNI. G Civil Muni. & City  
USHA PILLAI IRA LLC v RONALD ROSEMAN

Affirmed.

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

**KEY WORDS:** *Forcible entry and detainer action; R.C. 1932.01; R.C. 1932.02; subject-matter jurisdiction; color of title; res judicata; collateral estoppel; issue preclusion.*

*Pursuant to statute, the municipal court had subject-matter jurisdiction to entertain appellee's forcible entry and detainer action. The trial court did not err when it granted appellee's motion for directed verdict based upon its prior determination that appellee was the present title holder of the subject property and the trial evidence that substantiated appellee's forcible entry and detainer action.*

**112652** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
MARIO D. BLUE v BUREAU OF WORKERS COMPENSATION

## CASE DECISION LIST

Affirmed.

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

**KEY WORDS:** *Change of venue; due process; summary judgment.*

**Trial court did not err in denying appellant's untimely motion to change venue. Further, appellant was provided due process of law and the trial court did not err in granting appellee's motion for summary judgment.**

<b>112681</b>	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
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M.C. v LARRY GARDNER, JR.

Dismissed.

Eileen T. Gallagher, J., Mary Eileen Kilbane, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Dating violence protection order; expired; moot.*

**Appeal dating violence protection order is moot where the protection order is expired.**

<b>112743</b>	COMMON PLEAS COURT	A	Criminal C.P.
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STATE OF OHIO v DEVIN SHANNON

Reversed and remanded.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Conceded error; Loc.App.R. 16(B); plea; Crim.R. 11(C)(2)(c); constitutional rights.*

**The state concedes that the trial court failed to comply with Crim.R. 11(C)(2)(c) when it did not advise the defendant of his constitutional rights prior to accepting his guilty plea.**