

## CASE DECISION LIST

**August 29, 2024**

**112877** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
EDUCARE MEDICAL STAFFING, LLP, ET AL. v CHANEL STABLER

Vacated.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Settlement agreement, subject-matter jurisdiction.*

***Trial court's ruling on motion to enforce settlement agreement must be vacated where the trial court failed to retain jurisdiction to do so in its journal entry.***

**113091** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MOHAMMAD TABBAA v DR. HAZEM NOURALDIN, ET AL.

Affirmed.

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

**KEY WORDS:** *Motion for summary judgment; Civ.R. 56; breach of contract; de novo; illegal contract.*

***Judgment affirmed. The trial court did not err in granting summary judgment as to plaintiff-appellant's breach-of-contract claim. Our independent review of the record reveals that the purported oral contract was illegal and unenforceable as a matter of law and plaintiff-appellant failed to set forth sufficient evidence to establish the elements of his breach of written-contract claim. Accordingly, there remains no genuine issue as to any material fact and summary judgment was properly granted.***

**113232** BEDFORD MUNI. G Civil Muni. & City  
W.A.F.P., INC v SKY FUEL INC., ET AL.

Affirmed and remanded.

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

**KEY WORDS:** *Sua sponte dismissal for want of prosecution; Civ.R. 41(B)(1); sua sponte journal entry vacating dismissal; continuing jurisdiction; default judgment; Civ.R. 60(B) motion to vacate judgment.*

***The municipal court did not err by sua sponte dismissing a case for***

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**want of prosecution, sua sponte vacating its own dismissal, and granting default judgment. On remand the court is instructed to consider and rule on defendant's Civ.R. 60(B) motion to vacate judgment.**

**113234**                      ROCKY RIVER MUNI.                      G                      Civil Muni. & City  
TESIA THOMAS v GHASSAN SALAHALDIN, ET AL.

Affirmed.

Lisa B. Forbes, P.J., Emanuella D. Groves, J., and Mary J. Boyle, J., concur.

**KEY WORDS: Pro se litigants; municipal court; failure to file transcript of proceedings before a magistrate; Civ.R. 53(D); Civ.R. 4; service; failure to grant continuance; recusal of magistrate.**

**Judgment in favor of defendants is affirmed in this case alleging a motor vehicle accident. The plaintiff, acting pro se, failed to file a transcript of the trial, which was held before a magistrate. We must presume regularity of the proceedings because we are unable to conduct a meaningful review.**

**113269**                      COMMON PLEAS COURT                      A                      Criminal C.P.  
STATE OF OHIO v DANIEL BERGSTRESSER

Affirmed in part, reversed in part, and remanded.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Michael John Ryan, J., concur.

**KEY WORDS: Death pending appeal; motion to substitute; App.R. 29(A); State v. McGettrick; theft; sufficiency of the evidence; restitution; hearing; R.C. 2929.18(A)(1); merger; postrelease control.**

**Where a criminal defendant dies during the pendency of their direct appeal, App.R. 29(A) provides that a party may file a motion to substitute. Appellant's convictions were supported by sufficient evidence. The trial court was required to hold a restitution hearing where trial counsel objected to the amount of restitution ordered at sentencing. It was not plain error to decline to merge appellant's offenses. A challenge to the trial court's failure to properly advise the appellant as to postrelease control was mooted by the appellant's death.**

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**113305** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
WBL SPO I, LLC. v D-V.I.P., PROPERTIES & MANAGEMENT GROUP, LLC, ET AL.

Affirmed.

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

**KEY WORDS:** *Foreclosure; motion for relief from judgment; Civ.R. 60(B); plain error.*

*Trial court did not commit plain error in denying appellants' motion for relief from judgment under Civ.R. 60(B)(1), (3) or (5) based on appellants' alleged mistake in the "identity of the lender" and appellee's alleged forgery of, or misrepresentations in, the mortgage acknowledgment and the "accounting" appellee submitted to the trial court. Appellants admitted in their answer that they executed the note at issue, the error in the mortgage acknowledgment was evident from the face of the document, and the "accounting" about which appellants complained was submitted by appellants, not appellee. Appellants failed to oppose appellee's motion for summary judgment on its foreclosure complaint, failed to file objections to magistrate's decision on summary judgment, failed to appeal the trial court's judgment granting summary judgment and ordering foreclosure, and failed to file objections to the magistrate's decision denying appellants' motion for relief from judgment.*

**113329** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v KRISTINA JOHNS

Affirmed.

Michael John Ryan, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Endangering children; weight of the evidence; witness credibility; ineffective assistance of counsel.*

*Judgment affirmed. The defendant's endangering conviction was not against the manifest weight of the evidence. It was not incredible that the jury believed the sole eyewitness's account of the incident. The eyewitness was a neutral person who had no incentive to fabricate the incident.*

*The defendant has failed to demonstrate that trial counsel's performance was deficient or that the result of the trial would have been different had counsel obtained the defendant's medical records. Counsel questioned the witnesses about the defendant's alleged shoulder injury and argued to the jury, in part, that based on the alleged shoulder injury, the defendant could not have committed the act.*

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**113394** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v BRANDON KOHLER

Affirmed.

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

**KEY WORDS:** *Evid.R. 404(B); other-acts evidence; admissibility; intrinsic evidence; background information; explains the circumstances; context; common scheme or plan evidence; sexual battery; R.C. 2907.03(A)(11); Tier III sex offender; R.C. 2950.01; R.C. 2950.01(B)(2) exceptions; lack of consent; custodial authority.*

*Evidence that explained the circumstances or background of the events leading to the charged offenses and provided context for the relationships of the parties involved was not subject to Evid.R. 404(B) and was properly admitted by the trial court. Even assuming the disputed evidence was subject to Evid.R. 404(B), the other-acts evidence was admissible as common scheme or plan evidence whose probative value was not substantially outweighed by any danger of unfair prejudice.*

*The jury found defendant-appellant, who was working as a corrections officer at all relevant times, engaged in sexual conduct with two inmates at the correctional facility where he worked and, therefore, rendered a verdict that he was guilty of sexual battery in violation of R.C. 2907.03(A)(11). Based upon the established authoritarian relationship between defendant-appellant as a corrections officer and the victims - his inmates - the jury's guilty verdict impliedly determined that the sexual conduct occurred without the victims' consent. Thus, it was not plain error for the trial court to designate defendant-appellant as a Tier III sex offender under R.C. 2950.01.*

**113406** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v LARENZANEY LONG

Affirmed.

Anita Laster Mays, J., Kathleen Ann Keough, A.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Sentence contrary to law; R.C. 2929.11; R.C. 2929.12.*

*The appellant's sentence is not contrary to law because the sentence does not fall outside the statutory range for the offense and the sentencing court considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.*

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**113418** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v NINA CONGENI

Dismissed.

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

**KEY WORDS:** *Final appealable order; jurisdiction.*

*The appealed judgment entry does not indicate any ruling on the defendant-appellant's motion to modify probation to permit the use of medical marijuana, nor does it contain any ruling as to any probation violation. While the transcript reflects the trial court's opinion as to the substantive question of whether medical marijuana use can amount to a probation violation, this is insufficient to create a final appealable order. Since the defendant-appellant's motion to modify probation technically remains pending and the record reflects only that the court will presumably find a violation of the terms of her community control if she continues to test positive, there is no final, appealable order. Accordingly, we lack jurisdiction to address the appeal as the record now stands. Therefore, we dismiss the case for lack of final, appealable order.*

**113435** CLEVELAND MUNI. G Civil Muni. & City  
PERRY FERRELL v EDDIE COLE

Affirmed.

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

**KEY WORDS:** *Magistrate's decision; objections; failure to file transcript; Civ.R. 53; plain error; waiver.*

*Judgment affirmed. Appellant failed to file a transcript with her objections to the factual findings in the magistrate's decision granting appellee's eviction action. If a party fails to follow the procedures set forth in Civ.R. 53(D)(3)(b)(iii) for objecting to a magistrate's findings by failing to provide a transcript to the trial court when filing objections, that party waives any appeal as to those findings other than claims of plain error. Appellant 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.*

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**113521** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
M.F. v CUYAHOGA COUNTY DIVISION OF CHILDREN & FAMILIES

Vacated and remanded.

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

**KEY WORDS:** *Subject-matter jurisdiction; administrative appeals; R.C. 2506.01(A) and (C); child services agency; substantiated neglect.*

*A child services agency's determination of substantiated neglect against the plaintiff is not a final decision under R.C. 2506.01 because it does not determine a person's "rights, duties, privileges, benefits, or legal relationships." See Kyser v. Summit Cty. Children Servs., 2024-Ohio-2898.*

**113531** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v NELSON REILLO

Reversed and remanded.

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

**KEY WORDS:** *Weight of the evidence, rape, gross sexual imposition.*

*Reversed and remanded. The defendant's convictions for rape and gross sexual imposition are against the weight of the evidence, and in this exceptional case, the convictions are reversed and remanded for a new trial.*

**113598** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TYWON JONES

Affirmed.

Frank Daniel Celebrezze, III, J., Kathleen Ann Keough, A.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Confrontation Clause; Sixth Amendment; defendant's right to be present; plea agreement; Crim.R. 11; joint sentencing recommendation; court discretion; court not obligated to follow sentencing recommendation; defendant on notice; due process; knowing, voluntary, and intelligent plea; consecutive sentences; findings; R.C. 2953.08; clearly and convincingly; record supports consecutive sentences; R.C. 2929.14(C); statements during hearing viewed in their entirety; findings can be found in record.*

*Appellant's Sixth Amendment rights were not violated by his*

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absence at his codefendant's sentencing. In addition, the trial court did not err in imposing a sentence greater than the jointly recommended sentence. Further, the trial court made the requisite findings during the sentencing hearing under R.C. 2929.14(C)(4), and the findings are clearly and convincingly supported by the record. The imposition of consecutive sentences was not contrary to law.

**113620** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ROBERT BATES

Affirmed.

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

**KEY WORDS:** *Postsentence motion to withdraw guilty pleas; Crim.R. 32.1; manifest injustice; abuse of discretion; res judicata; ineffective assistance of counsel; failure to investigate; motion to suppress; postrelease control; void/voidable sentence; knowing, intelligent, voluntary guilty pleas.*

*Defendant's claims were insufficient to show that he received ineffective assistance of counsel that rendered his guilty pleas unknowing, unintelligent or involuntary. Defendant did not set forth facts in his motion and supporting affidavit that, if true, would have demonstrated a manifest injustice and required the trial court to grant his motion to withdraw his guilty pleas. Trial counsel was not ineffective for failing to predict the Ohio Supreme Court's rulings in State v. Harper, 2020-Ohio-2913, State v. Hudson, 2020-Ohio-3849, and State v. Bates, 2022-Ohio-475, and file a motion to suppress evidence from a "warrantless search" on that basis. The trial court, therefore, did not abuse its discretion in denying Bates' postsentence motion to withdraw his guilty pleas without an evidentiary hearing.*

**113758** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: J.S., ET AL.

Affirmed.

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

**KEY WORDS:** *Adjudication; disposition; bifurcation; Juv.R. 34(A); R.C. 2151.35(B)(1); permanent custody; best interests of child; CCDCFS; R.C. 2151.414; clear and convincing evidence; manifest weight; sufficiency of the evidence.*

*Judgment affirmed. The record is clear that there was a definite bifurcation of the proceedings, as well as consent by Mother to hold the hearings on the same day. Mother was aware, prior to the*

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hearing, of the court's intent to address both adjudication and disposition on the same day and chose not to attend the hearings. Additionally, Mother was given an opportunity to present witnesses and any other evidence regarding disposition. While sufficiency and manifest weight are distinct legal concepts, a finding that a judgment is supported by the manifest weight of the evidence necessarily includes a finding that sufficient evidence supports the judgment. Here, there is clear and convincing evidence in the record to support the juvenile court's determination that permanent custody to CDCFS is in the children's best interest. Therefore, the court's decision to grant permanent custody is not against the manifest weight of the evidence.

**113778** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE J.F.

Affirmed.

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

**KEY WORDS:** *Permanent custody; R.C. 2929.414(E); manifest weight of the evidence; ineffective assistance of counsel.*

*The juvenile court's grant of permanent custody of a minor child to a Children and Family Services Agency was not against the manifest weight of the evidence. The juvenile court's finding that the minor child could not be placed with mother within a reasonable time, or should not be placed with mother, pursuant to R.C. 2151.414(E) was based on clear and convincing evidence that the Agency engaged in reasonable case planning and diligent efforts and mother failed to substantially remedy the conditions causing the minor child's removal. Further, mother had chronic mental illness and chemical dependency that was so severe that it made her unable to provide an adequate permanent home. Mother also neglected the minor child from the date of the original complaint to the dispositional hearing, and mother had parental rights terminated involuntarily with respect to a sibling of the minor child. Pursuant to R.C. 2151.414(B), the finding that permanent custody was in the child's best interests was supported by evidence that mother had a lengthy history of ongoing, unaddressed problems with substance abuse and mental health, did not engage with the case plan implemented, and had another child removed from her care in the past for similar reasons.*

*Mother did not show she received ineffective assistance of counsel. She could not show that the decision to stipulate to an amended complaint at the adjudicatory hearing was anything more than a tactical decision or that the outcome of the hearing would have been different had she not stipulated. Further, mother did not show that had counsel requested a continuance of the adjudicatory or dispositional hearing, the continuance would have been granted or that the outcome of the proceeding would have been different.*



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**113829** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: K.S., ET AL.

Affirmed.

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

***KEY WORDS: Parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.414(B)(1); child could not or should not be placed with either parent within a reasonable time; R.C. 2151.414(E) factors; best interest of the child; motion for continuance.***

***The record contains clear and convincing evidence to support the juvenile court's finding that at least one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) applied and that it was in the best interests of the children to grant permanent custody to the agency. The trial court did not abuse its discretion when it denied Mother's motion for continuance of trial.***