

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**May 30, 2024**

**112564** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TERRY FOSTER

Affirmed in part; vacated in part; and remanded.

Anita Laster Mays, J., Kathleen Ann Keough, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Crim.R. 11; knowing, intelligent, and voluntary guilty pleas; R.C. 2929.14(C)(4), consecutive sentences; firearm specification, R.C. 2941.145(A); mandatory prison term.*

*Judgment is affirmed in part, vacated in part, and remanded. Appellant's plea was knowingly, intelligently, and voluntarily made. The trial court partially complied with Crim.R. 11(C)(2)(a) regarding mandatory imprisonment and consecutive service of the firearm specification and appellant failed to demonstrate prejudice. The trial court failed to make the R.C. 2929.14(C)(4) consecutive sentence findings on the record or in the judgment entry.*

**112873** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v JUDITH Y. NEWELL

Affirmed and remanded.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Expert witness; Evid.R. 703; opinion based on personal knowledge and experience; lay witness; Evid.R. 701; sufficiency of the evidence; manifest weight of the evidence; App.R. 12(A)(2); App.R. 16(A)(7).*

*The trial court did not err when it admitted expert testimony, pursuant to Evid.R. 703, based upon the expert's personal knowledge and experience. The trial court did not err when it admitted lay testimony, pursuant to Evid.R. 701, rationally based upon a humane officer's perceptions and that aided to determine a fact in issue. The trial court did not err in accepting a guilty plea where no plea was entered and the case was tried to a jury. A review of the record demonstrates that the appellant's conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. Where appellant failed to cite case law or provide cogent arguments in support of her claims that the city asked leading questions of its witnesses; a witness perjured himself; and appellant's due process rights were violated, this court may decline to address the assignments of error. Because the trial court's judgment entry incorrectly stated the code section under which appellant was convicted, the case is remanded so that the trial court can correct the clerical error with a nunc pro tunc judgment entry.*

## CASE DECISION LIST

**112905** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
WARTHOG MANAGEMENT LLC v JORDAN HK FARES, ET AL.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Summary judgment, breach of contract, contract interpretation, plain language, declaratory judgment, specific performance, effect of breach.*

*Potential buyer of property filed complaint against sellers alleging breach of a purchase agreement for residential property. Potential buyer also sought declaratory judgment the purchase agreement was valid and prayed for specific performance of the purchase agreement.*

*The purchase agreement was signed and binding and required potential buyer to pay earnest money immediately upon receipt of purchase agreement. The potential buyer did not pay the earnest money upon receipt. Sellers thereafter notified potential buyer they breached the purchase agreement and thereafter entered into a subsequent purchase agreement with new buyers.*

*The trial court granted summary judgment to sellers, finding potential buyer to be in breach of the purchase agreement. The trial court also denied summary judgment on potential buyer's declaratory judgment because it found it was not entitled to specific performance because it was in breach of the purchase agreement.*

*A trial court's grant of summary judgment is reviewed de novo. In interpreting a contract, courts will construe a contract to give effect to the plain language used.*

*The purchase agreement required potential buyer to pay earnest money immediately upon the receipt of the signed purchase agreement. Potential buyer did not do so and thus breached the purchase agreement. Sellers were therefore entitled to summary judgment on potential buyer's claim that sellers breached the purchase agreement. Because potential buyer was in breach of the purchase agreement, it was not entitled to specific performance of the purchase agreement and it was not entitled to declaratory judgment.*

**112960** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
EST. OF DONALD SHURY, GREGORY W. KLUCHER & ELIZABETH KLUCHER REYNOLDS v  
PAUL CUSATO, ET AL.

Affirmed and remanded.

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

**KEY WORDS:** *Attorney fees; CSPA; Civ.R. 52.*

*Trial court did not abuse its discretion when it elected to award an amount in attorney fees that was approximately 16 percent of the award appellant requested under the CSPA. The record reflected that the trial court's order took into consideration the work that applied to the CSPA defense as well as the other claims in the case and adjusted the award accordingly.*

*Additionally, the trial court did not err when it denied appellant's request for findings of fact and conclusions of law pursuant to Civ.R. 52. In the instant case, the trial court's ruling coupled with other parts of the record provided an adequate basis for appellate review, such that the trial court substantially complied with Civ.R. 52.*

**112972** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
BARBARA A. MORGAN v MELVIN R. MORGAN

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Post-divorce decree proceedings; denial of motion for continuance; contempt of court; denial of motion to modify life insurance obligation; attorney fees.*

*The court did not abuse its discretion in ruling on various post-divorce decree motions. Husband repeatedly failed to abide by the terms of the separation agreement concerning his life insurance obligation to wife.*

**113046** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
KAMMS PLAZA SHOPPING CENTER, LLC v NIDA ENTERPRISES, INC., ET AL.

Affirmed.

Michael John Ryan, J., and Frank Daniel Celebrezze, III, J., concur; Lisa B. Fobes, P.J., concurs in judgment only.

**KEY WORDS:** *Commercial lease; guaranty; Civ.R. 12(B)(6); motion to dismiss; R.C. 2305.06; statute of limitations.*

*Appellees are not bound by subsequent variations of a 1993 original lease, to which they signed personal guaranties, when appellees were not parties to or named as tenants to the modified lease agreement.*

*This court need not decide the claim that the statute of limitations expired because appellees were not parties to the commercial lease in question.*

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**113310** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v ALBERT SPANN

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Pro se litigants; Civ.R. 60(B) motion for relief from judgment; petition for postconviction relief.*

*Defendant was convicted of aggravated murder in 2009. In 2022, he filed a Civ.R. 60(B) motion for relief from judgment concerning his felony conviction. We treated this motion as a petition for postconviction relief. The defendant argued that he recently acquired his medical records from the time he was awaiting trial for the aggravated murder, and these records indicate that he was improperly medicated; therefore, his plea was not knowing, voluntary, and intelligent. Defendant failed to demonstrate that he was unavoidably prevented from discovering his own medical records, and his petition for postconviction relief was untimely and properly denied.*

**113336** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CYNTHIA OSBORNE, ET AL. v J.T.O., INC., ET AL.

Reversed and remanded.

Frank Daniel Celebrezze, III, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Summary judgment; derivative action; Civ.R. 23.1; double-derivative action; interest in parent company; subsidiary; standing; limited partnership; motion for leave to amend complaint; abuse of discretion; timely; good faith; no justification for denial apparent from record; failure to rule on motion; implicit denial.*

*The trial court erred in granting summary judgment in favor of appellees because appellants had standing to pursue a double-derivative action. Further, the trial court abused its discretion in denying appellants' motion for leave to amend the complaint and failing to rule upon appellants' motion to modify discovery order and motion to compel.*

**113338** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v J. W. G.

## CASE DECISION LIST

Reversed and remanded.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Former R.C. 2953.32; sealing of record of conviction; expungement; statutory construction; hearing.*

*The version of R.C. 2953.32 that was in effect at the time appellant filed his application is unambiguous and mandates the trial court to hold a hearing on appellant's application to have his record of conviction expunged or sealed. The trial court in this case failed to follow the statute's mandates and erred in summarily denying appellant's application without a hearing.*

**113344** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
IN RE: CONTEMPT OF YAIR ZUCKERMAN

**113345** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
IN RE: CONTEMPT OF: HARRY SCHAYER

**113439** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CONTEMPT OF: YAIR ZUCKERMAN, ET AL. v BRYAN SNF, LLC, ET AL.

Dismissed.

Sean C. Gallagher, J., Kathleen Ann Keough, A.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Contempt; dismissed; final, appealable order; jurisdiction; sanction; conditional sanction; show cause hearing; warrant; arrest; debtor's examination; Civ.R. 60(B); bootstrap.*

*Appeal was dismissed for the lack of a final, appealable order and for want of jurisdiction. Without the imposition of a conditional or unconditional sanction, the orders finding appellants in contempt for failing to appear for a debtor's examination were not final, appealable orders. The trial court possessed the authority to order that warrants be issued for arrest to bring the contemnors before the court to answer for their contemptuous conduct, and the appellants had yet to appear before the court. Also, a party cannot bootstrap a ruling on a Civ.R. 60(B) motion into a final, appealable order where the underlying contested order is not final.*

**113395** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
SABRINA MITCHELL v DIRECTOR OHIO DEPT. OF JOB AND FAMILY SERVICES, ET AL.

Affirmed.

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

**KEY WORDS:** *Administrative appeal; timeliness; subject-matter*

## **CASE DECISION LIST**

(Case 113395 continued)

**jurisdiction; court of common pleas; App.R. 12; App.R. 16.**

**The trial court properly dismissed the complaint for lack of subject-matter jurisdiction where it was filed outside the 30-day timeframe for an administrative appeal.**