

## CASE DECISION LIST

September 26, 2024

**111840** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MICHELLE KRONENBERG

Affirmed.

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

**KEY WORDS:** *App.R. 26(B); reopened appeal; ineffective assistance of appellate counsel; deficient; prejudiced by deficiency; sufficiency of the evidence; violation of a protection order; R.C. 2919.27; service; constructive notice; menacing by stalking; R.C. 2903.211; pattern of conduct; knowingly; mental distress; merger; allied offenses of similar import; separate animus; separate acts.*

*Appellant's convictions were supported by sufficient evidence. Further, the trial court did not err in declining to merge the counts for sentencing. Appellant's original appellate counsel was not ineffective for failing to raise and/or argue the above assignments of error. Pursuant to App.R. 26(B)(9), the prior judgment is confirmed.*

**113167** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MACKENZIE F. SHIRILLA

Affirmed.

Eileen A. Gallagher, P.J., Emauella D. Groves, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Murder; R.C. 2903.02(A); R.C. 2903.02(B); felonious assault; R.C. 2903.11(A)(1); R.C. 2903.11(A)(2); aggravated vehicular homicide; R.C. 2903.06(A)(2)(a); drug possession; R.C. 2925.11(A); psilocybin; possessing criminal tools; R.C. 2923.24(A); digital scale; Juv.R. 30; mandatory transfer; bindover; juvenile; sufficiency of the evidence; manifest weight of the evidence; Evid.R. 404(B); character evidence; other acts; due process; meaningful defense; complete defense.*

*The defendant's convictions for murder and felonious assault were supported by sufficient evidence and were not against the manifest weight of the evidence. Several witnesses testified that she and her boyfriend were in a loving relationship and that the defendant suffered from a medical condition that can cause dizziness. But the defendant had previously threatened to crash her car with her boyfriend inside during a fight; the defendant then did crash her car into a wall, killing the boyfriend and another passenger; a mechanical inspection revealed no latent mechanical defects that could have caused the crash; a medical examination of the defendant after the crash revealed no significant physical or mental abnormalities that would be indicative of a seizure or other neurological event; data from the vehicle's computer revealed that*

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the accelerator was depressed to a hundred percent and that the driver had not once hit the brake before hitting the wall. After reviewing the entire record, this was not the exceptional case where the evidence weighed heavily against conviction.

For the same reason that there was sufficient evidence to sustain the convictions, the State's presentation of salient pieces of evidence to the juvenile court was sufficient to establish probable cause for a mandatory transfer of the case to the common pleas court for criminal prosecution.

Evidence of the defendant's past threats and verbal and physical violence toward her boyfriend was appropriately introduced not as character evidence but to establish motive, intent and the absence of mistake or accident.

It was not an abuse of discretion for the trial court to limit the defense in its cross-examination of two witnesses.

This court declined to find plain error from the medical examiner's amendment to certain autopsy conclusions based on the unique circumstances of the case and this court's precedent.

**113331** CLEVELAND MUNI. G Civil Muni. & City  
KNIGHTS CENTER CORPORATION HTTA KNIGHTS CENTER CORP. v  
BURTON LAWRENCE SPORTS RESTAURANT LLC, ET AL.

Affirmed.

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

**KEY WORDS:** *Eviction; forcible entry and detainer; commercial; R.C. Ch. 1923.*

**Judgment for eviction affirmed where the parties entered into an agreed judgment entry providing for that remedy if the tenants failed to make certain payments toward an outstanding rent obligation and where it was undisputed that the tenants failed to make the required payments.**

**113516** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
LAKEVIEW LOAN SERVICING, LLC v PATRICIA ANN SOLDAT, ET AL.

Affirmed.

Anita Laster Mays, J., Michelle J. Sheehan, P.J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *R.C. 5301.233, mortgages to secure certain advances, R.C. 2329.31(A), confirmation of foreclosure sale, R.C. 5311.18, mortgage may contain clause securing condominium unit*

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advances.

The trial court's confirmation of sale and denial of appellant's request for reimbursement for "condominium dues" was not an abuse of discretion. A mortgage foreclosure involves two appealable orders: 1) the foreclosure decree preceding the sale that sets forth the interests of the parties; and 2) the confirmation decree that determines the sale was legally compliant. *CitiMortgage, Inc. v. Roznowski, 2014-Ohio-1984*. Appellant failed to request payment for condominium dues in the foreclosure complaint though secured by the mortgage, did not address the omission in the foreclosure decree and did not appeal the issue.

**113536** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
VINCENT ALAN PARKER v NANCY M. RUSSO, ET AL.

Affirmed.

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

**KEY WORDS:** *Procedural due process; notice; dismiss; failure to prosecute; Civ.R. 41(B)(1); failure to state a claim; Civ.R. 12(B)(6); declaratory judgment; collateral attack; conviction.*

*Trial court properly dismissed complaint for failure to prosecute where plaintiff failed to comply with trial court's order to serve the defendants within 30 days and the court's order warned plaintiff that failure to comply could result in a dismissal for failure to prosecute under Civ.R. 41(B)(1).*

**113562** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
KATHLEEN COOK, ET AL. v M-F TRANSPORT, INC., ET AL.

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Plain error; common law; jury; discharge; verdict; obvious error; judgment notwithstanding the verdict; inherent authority; justice; damages; mistake.*

*The trial court did not commit plain error by exercising its inherent authority to reconvene the jury upon discovering that the jury had mistakenly awarded less damages to the plaintiffs than intended.*

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**113579** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JAMES HAYES

Affirmed.

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

**KEY WORDS:** *Jury instructions; voluntary manslaughter; manifest weight of the evidence; sufficient evidence.*

*The trial court did not err in denying the appellant's request for a jury instruction regarding the inferior offense of voluntary manslaughter as the evidence did not support such an instruction. The appellant's convictions were not against the manifest weight of the evidence, and there was sufficient evidence to convict.*

**113599** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
MAUREEN FARRELL SULLIVAN v BRIAN THOMAS SULLIVAN

Affirmed.

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

**KEY WORDS:** *Motion to modify or terminate spousal support; abuse of discretion; retirement; local rules; motion to dismiss; time limitations; trial court's questions to witnesses; negative inference; substantial change in circumstances.*

*Judgment affirmed. Our standard of reviewing decisions of a domestic relations court is generally the abuse of discretion standard. Upon review, the trial court did not abuse its discretion.*

*The appellee substantially complied with the local rule regarding submission of financial documents and the trial court did not abuse its discretion by denying the appellant's motion to dismiss appellee's motion to modify or terminate spousal support.*

*The trial court's time limitations in this case did not constitute an abuse of discretion. The record demonstrates that the parties were able to complete their examinations of the witnesses within the court's time parameters; there is no evidence that either party was prevented from presenting evidence because of the time limitations.*

*The trial court's questioning of witnesses was not an abuse of discretion. The record demonstrates that the trial court questioned the parties within the bounds of its discretion and without partiality toward either party.*

*The trial court did not abuse its discretion by failing to apply a negative inference concerning appellee's income based on his failure to strictly comply with the local rule. The court found that the appellee substantially complied with the local rule, a finding we*

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**uphold. Thus, the concept of negative inference was not applicable in this situation.**

**The record in this case demonstrates that appellee's retirement was a substantial change in circumstance that warranted a modification of his spousal support obligation to appellant. The trial court did not abuse its discretion by ordering a modification.**

**113612** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v U.T.

**113613** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v U.T.

**113614** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v U.T.

Reversed and remanded.

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

**KEY WORDS: R.C. 2953.32(A)(5); expungement; sealing the records of conviction.**

***The trial court's judgment sealing the records of the applicant's three drug-trafficking convictions is reversed. The applicant's convictions are not eligible to be sealed because the April 2023 version of R.C. 2953.32(A)(5) prevents the expungement or sealing of more than two third-degree felony convictions.***

**113661** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
THOMAS WILLIAMS v MICHELLE HUNG, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS: Appellate mandate, authority to manage docket, motion or judgment on the pleadings, Civ.R. 12(C), settlement agreement and release, allegation of fraud in inducement of settlement agreement, litigation privilege and immunity.**

***In a separate proceeding, plaintiff settled an employment lawsuit against county in federal court entering into a settlement agreement and release. After settling the case, plaintiff learned in other litigation that the county commissioner provided information from an executive session about plaintiff's discharge to another former county employee, whose attorney then used that information in a separate lawsuit. Plaintiff filed claims against the county commissioner, the other former employee, and the attorney,***

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alleging claims of civil abuse of process, civil recovery for criminal acts, civil conspiracy, and negligence. After filing suit, plaintiff filed a motion to disqualify attorney from representing the former employee. While the interlocutory appeal was pending, the county commissioner, former employee through new counsel, and attorney moved for judgment on the pleadings. The trial court's grant of the motion to disqualify was reversed by this court in an interlocutory appeal, and the case was remanded for further proceedings. After remand and without conducting further proceedings on the motion for disqualification, the trial court granted commissioner's and former employee's motions for judgment on the pleadings because plaintiff released them from liability in the settlement agreement and because plaintiff had not tendered back the proceeds from the settlement agreement. The trial court granted attorney's motion because he had litigation privilege or immunity.

The trial court has the authority to manage and administer its own docket and because the mandate on remand did not preclude the trial court from determining other matters, the trial court did not abuse its discretion by first ruling on the motions for judgment on the pleadings.

A release in a settlement agreement is an absolute bar to a later action on any claim encompassed within it absent a showing of fraud, duress, or other wrongful conduct in procuring it. The trial court properly found the settlement agreement released the county commissioner and the former employee. Further, even construing the complaint as alleging fraud in the inducement of the settlement agreement, plaintiff did not allege he returned the proceeds from the settlement in federal court.

An attorney is immune from liability to third persons arising from his performance as an attorney in good faith on behalf of, and with the knowledge of his client, unless such third person is in privity with the client. The facts alleged in the complaint against attorney were of conduct typical of an attorney and did not allege malice. As such, attorney was entitled to the application of the doctrine-of-litigation privilege and the trial court properly granted attorney's motion for judgment on the pleadings.

**113669** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
JERMELL MOORE v DAVID YOST, ATTORNEY GENERAL OF OHIO

Affirmed.

Sean C. Gallagher, J., Emanuella D. Groves, P.J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Wrongful imprisonment; R.C. 2743.48; wrongfully imprisoned individual.*

**Affirmed.** *The trial court did not err in dismissing the defendant's complaint because the defendant cannot demonstrate that he is a "wrongfully imprisoned individual" as statutorily defined. The defendant originally pleaded guilty to the offense at issue, and*

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**although that plea was vacated in the direct appeal, R.C. 2743.48(A)(2) precludes him from availing himself of the wrongful-imprisonment statute under Dunbar v. State, 2013-Ohio-2163.**