

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 7

July 10, 2025

114029	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
K.L.B. v M.T.B.			

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Divorce; asset valuation; equitable division of marital assets; additional evidence; Civ.R. 53(D)(4)(d); cross-appeal; attorney fees; security; life insurance; standard of review; abuse of discretion.*

Affirmed in part, reversed in part, and remanded. In the appeal and cross-appeal, the parties challenged several aspects of the final entry of divorce, including the valuation and inclusion of assets as marital property, the amount and duration of spousal support, and the failure to award attorney fees or to require the parties to secure the judgment with a life insurance policy. The court erred by including two assets as marital property despite one being a liquidated amount deposited into the couple's retirement account that was equally divided and the other was not owned by either party. The remainder of the arguments failed to demonstrate an abuse of discretion.

114160	BEDFORD MUNI.	C	Criminal Muni. & City
CITY OF SOLON v DAWN M. MOORE			

Reversed and remanded.

Lisa B. Forbes, P.J., Mary J. Boyle, J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Motion to suppress; suppression hearing; OVI; reasonable suspicion; totality of the circumstances; field sobriety testing; 9-1-1 dispatch call; reliable informant; glassy eyes; slurred speech; odor of alcohol; indicators; body camera.*

The trial court erred in granting defendant's motion to suppress evidence obtained from an OVI investigation where a reliable 9-1-1 informant reported the defendant for drunk driving, and officers were able to corroborate key details of that report at the scene, observing that the defendant was improperly parked, with glassy eyes, slurred speech, and a bottle of recently purchased alcohol in the car. These facts, taken together, gave officers reasonable suspicion to conduct field sobriety tests.

CASE DECISION LIST

114186	LAKEWOOD MUNI.	C	Criminal Muni. & City
CITY OF LAKEWOOD v MICHAEL T. SMITH			

Affirmed.

Deena R. Calabrese, J.; Michelle J. Sheehan, J., concurs (with separate concurring opinion); Eileen A. Gallagher, A.J., dissents (with separate opinion).

KEY WORDS: *Records under seal; improper admission of evidence; ex parte protection order; civil stalking protection order; sufficiency of the evidence; R.C. 2903.214(G)(2); R.C. 2919.27(A)(2); Crim.R. 29; R.C. 149.43(A)(1)(v); Crim.R. 52(A).*

Affirmed. *Appellant was not prejudiced by the admission of evidence from a sealed record. Trial court did not err when it denied a motion for judgment of acquittal under Crim.R. 29.*

114228	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE C.S.			

Affirmed.

Anita Laster Mays, J., and Michelle J. Sheehan, P.J., concur; Sean C. Gallagher, concurs in judgment only (with separate opinion).

KEY WORDS: *Gross sexual imposition; manifest weight; sufficiency; delinquent; adjudication; unconstitutionally vague; testify; DNA evidence; victim; registered sex offender; unconstitutional as applied; R.C. 2907.02(A)(1)(b); R.C. 2907.05 and 2151.01; waiver doctrine; fundamental rights; discretionary review; juvenile offender; reasonable doubt; age; corroborating testimony.*

A reviewing court must consider the merits of a constitutional claim, rather than invoking the waiver doctrine, when a juvenile offender's challenge implicates the juvenile's fundamental rights, and review is warranted under R.C. 2151.01. R.C. 2907.02(A)(1)(b) is not unconstitutional as applied to appellant. The State presented sufficient evidence to support adjudications of rape and gross sexual imposition under R.C. 2907.02(A)(1)(b) and 2907.05.

114306	COMMON PLEAS COURT	E	Civil C.P.-Not Juv, Dom Or Prob
MON CHERI DAVENPORT, ET AL. v PROGRESSIVE DIRECT INSURANCE COMPANY, ET AL.			

Affirmed.

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

KEY WORDS: *Class certification; Civ. R. 23; abuse of discretion.*

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 3 of 7

(Case 114306 continued)

Judgment affirmed. The trial court did not abuse its discretion by granting the plaintiffs' motion for class certification. Common issues about the insurance company's use of a projected-sold adjustment ("PSA") in calculating the actual cash value of the plaintiffs' total-loss claims predominate the litigation. The other requirements for class certification under Civ.R. 23 - identifiability, class representatives, numerosity, typicality, adequacy, and superiority - were also met.

114368 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ESTATE OF MICHAEL V. KELLEY v WULIGER & WULIGER, LLC, ET AL.

Affirmed.

Emanuella D. Groves, P.J., Anita Laster Mays, J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Motion for judgment on the pleadings; Civ.R. 12(C); de novo; statute of limitations; legal malpractice; cognizable event; R.C. 2305.11(A); motion for leave to amend complaint; Civ.R. 15(A); abuse of discretion.*

Judgment affirmed. The trial court did not err in granting the defendants' motion for judgment on the pleadings. Since the defendants pleaded a statute-of-limitations defense and the pleadings unequivocally demonstrate that the legal-malpractice action was commenced after the limitations period expired, Civ.R. 12(C) relief was appropriate. Moreover, the trial court did not abuse its discretion when it denied the plaintiff's motion for leave to file an amended complaint because the amendment was futile.

114383 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CLE VENTURE FUND, L.P. v COVENTRY PARTNERS, LLC, ET AL.

Affirmed.

Emanuella D. Groves, J., Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *App.R. 16(A)(7); App.R. 12(A)(2); plain error.*

Where appellants brief fails to comply with App.R. 16(A)(7), the court of appeals may disregard appellants' assignments of error. When appellants raise an issue for the first time on appeal and yet fail to argue plain error, the court of appeals is not required to consider it.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 4 of 7

114402 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE R.M.H.

Affirmed.

Deena R. Calabrese, J., Emanuella D. Groves, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Child support; high-income parent; basic child-support schedule; upward deviation; deviation factors; needs and standard of living; imputed income; voluntary unemployment; abuse of discretion; verification of income; custodial parent; noncustodial parent; record on appeal; lack of transcript; R.C. 3119.02; R.C. 3119.04; R.C. 3119.05(A); R.C. 3119.021; R.C. 3119.23(E); R.C. 3119.23(K); R.C. 3119.23(L); App.R. 9(A); App.R. 9(B); App.R. 9(C); App.R. 27.*

Judgment affirmed. We presume the regularity of proceedings because mother filed no transcript or App.R. 9(C) statement. In addition, mother filed neither proposed findings nor child-support worksheets with the juvenile court following the child-support hearing, despite an extension of time in which to do so, and she raised no timely objections as to father's financial disclosures. The juvenile court properly applied R.C. 3119.04 and the deviation factors in R.C. 3119.23(E), (K), and (L) to impose an upward deviation in support for the high-income years 2021-2022 and properly used the basic schedule in R.C. 3119.021 for the markedly lower 2023-2024 income years. We find no abuse of discretion in the income determinations, worksheet calculations, or the upward deviation, and no reversible error in the court's handling of father's financial documentation or alleged rental income.

114408 PARMA MUNI. G Civil Muni. & City
DAVID WISHNOSKY v HARBOUR LIGHT 1 CONDOMINIUM ASSOCIATION, INC.

Affirmed.

Lisa B. Forbes, P.J., Eileen T. Gallagher, J., and Michael John Ryan, J., concur.

KEY WORDS: *Condominium association; governing documents; amendment; contract; ordinary meaning; purchase; transfer; consideration.*

Unit owner in a residential subdivision sued condominium association for legal fees that the association had assessed against him. The association incurred these fees in attempting to evict the unit owner for violating a "no-leasing" amendment in the association's governing documents. The amendment prevented owners that "purchase" their units after the amendment went into effect in 1990 from leasing their units to non-owners.

Unit owner, who purchased his unit in 1979 and consistently leased his unit in the decades that followed, argued the leasing

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 5 of 7

(Case 114408 continued)

amendment did not apply to him. Though the unit owner had transferred the unit several times after the amendment, all transfers were between him, his wife, and corporate entities they shared for purposes of financial planning.

The transfers were not purchases, applying de novo the ordinary meaning of the word, for lack of consideration. The trial court did not abuse its discretion in finding no consideration was exchanged, where county recorder documents showed no sales or conveyance fee was exchanged during the unit transfers, the deed recited only nominal consideration of \$10.00, and the unit stayed in the family's ownership. Because the transfers of the unit were not purchases, the no-leasing amendment did not apply to the unit owner. Therefore, the unit owner was entitled to legal fees the association assessed when it tried to evict him.

114511	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DEANDRE LEWIS			

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, P.J., Anita Laster Mays, J., and Deena R. Calabrese, J., concur.

KEY WORDS: *Withdrawal of counsel; motion to remove appointed counsel; conflict of interests; other weapons evidence; sufficiency of the evidence.*

Trial court did not err when it denied appellant's motion to remove appointed counsel without addressing appellant directly where the record reflected that there was no conflict of interest, breakdown in communication, or an irreconcilable conflict. Where the appellant did not raise specific issues and his complaints were vague, the trial court was not required to inquire further.

Trial court did not err when it denied counsels' motion to withdraw after appellant filed a grievance with the bar association. Appellant did not notify counsel or the court about the grievance until the first day of trial. Counsel was not able to determine the nature of the grievance and only knew that it had been filed the month before trial. The filing of a grievance is a potential conflict of interest, which is insufficient to warrant removal of counsel. Where appellant fails to establish an actual conflict of interest, the court does not err when it denies the motion without a hearing and without addressing the appellant directly.

Trial court did not err in allowing the introduction of other weapons evidence where there was overwhelming evidence of appellant's guilt.

There was insufficient evidence to support the conviction under R.C. 2941.146(A), where an element of the offense required the commission of a crime with a mens rea of purposeful or knowing and the underlying crime was a strict liability offense. However, there was sufficient evidence and the conviction was supported by

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 6 of 7

(Case 114511 continued)

the greater weight of the evidence for the crimes of murder and attempted murder where the evidence established that an accomplice fired a weapon from within a motor vehicle at the time of the shooting.

114565	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MOESHA TAYLOR			

Dismissed.

Anita Laster Mays, J., Eileen A. Gallagher, A.J., and Emanuella D. Groves, concur.

KEY WORDS: *Affirmed; denied; explanation.*

This court has examined and considered the arguments identified in counsel's Anders brief addressing the validity of the appellant's plea and sentence. We conclude that there are no arguable legal points on the merits of this matter. This appeal is wholly frivolous pursuant to Anders v. California, 386 U.S. 738 (1967). Counsel's request to withdraw is granted.

114697	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v AMIRA DUNCAN			

Affirmed.

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

KEY WORDS: *Petition for postconviction relief; amendment of petition; successive petition; res judicata; ineffective assistance of counsel; hearing.*

Judgment affirmed. Because the petitioner filed her motion to amend her petition for postconviction relief after the State filed its response, she was required to seek and be granted leave of court, which she failed to do. Further, because the trial court had already ruled on her petition at the time she filed her motion to amend, it was akin to a motion for reconsideration that the trial court was without authority to consider. Thus, the petitioner's motion to amend could only be treated as a second postconviction petition.

Because the petitioner was convicted pursuant to a guilty plea rather than by reason of a trial, she could not demonstrate that, but for constitutional error at trial, no reasonable factfinder would have found her guilty, as required under R.C. 2953.23(A)(1)(b).

The petitioner was not entitled to a hearing because her claims were barred by res judicata and the petition did not set forth sufficient operative facts to establish substantive grounds for relief.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 7 of 7

(Case 114697 continued)

The petitioner failed to demonstrate ineffective assistance of counsel.