OHIO STATE BAR ASSOCIATION REPORT

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Ohio case law summaries from Aug. 1, 2023 – Nov. 30, 2023

In Case You Missed It: The following are selected summaries of cases decided by Ohio courts between Aug. 1, 2023 – Nov. 30, 2023. To view all of the decisions issued in this time period or to read the selected cases in their entirety, please visit ohiobar.org/greenbook where you can search by case name or view by date.

Administrative and Regulatory

Appeal/Timeliness/Prohibition. State ex rel. Youngstown Civ. Serv. Comm. v. Sweeney | 2023-Ohio-3006 | Supreme Court of Ohio | 08/30/2023 City civil service commission and related relators' petition for a writ of prohibition to prevent judge from exercising jurisdiction over an administrative appeal and to vacate all orders issued in the appeal commenced by police detective in promotion exam dispute, where the commission asserts that detective's appeal is untimely, is denied since the evidence shows that detective's notice of appeal purports to appeal a more recent commission order than the order that is the subject of commission's prohibition petition, detective's pending administrative appeal is timely, and the judge does not patently and unambiguously lack jurisdiction over it; to the extent the judge allows detective to raise issues on an appeal related to the commission's earlier order, relators have an adequate remedy by way of an appeal to challenge any error.

Zoning/Appeal/Transcript/Decision. Kennedy v. Heath Bd. of Zoning Appeals | 2023-Ohio-2987 | 5th Appellate District | 08/25/2023 In appeal of board of zoning appeals' denial of plaintiff's application for a permit to install a digital billboard, trial court erred in vacating the board's denial where plaintiff filed an original and amended praecipe with his notice of appeal of the board's decision, but the board failed to file the transcript of proceedings with the trial court, as required by R.C. 2506.02, and the trial court failed to comply with R.C. 2506.03 by issuing a decision on the merits based only on documents attached to the parties' respective motions, so the case is remanded.

Victim of crime/Motor vehicle accident. In re West | 2023-Ohio-3337 | Court of Claims | 08/16/2023 In claim by applicant-motor vehicle accident victim for victims of crimes compensation for economic loss arising from criminally injurious conduct, asserting injuries sustained when unidentified driver cut off applicant in traffic and then fled the scene, magistrate recommends that the court deny the claim on reasoning that the applicant does not qualify as a victim of criminally injurious conduct, R.C. 2743.51(C), where it is undisputed that the unidentified driver did cut applicant off in traffic, and that applicant drove into the median wall on the highway and sustained personal injury, but there is no evidence that the unidentified driver's vehicle struck applicant's vehicle or was aware that his/her actions caused the accident.

Victim of crime/Report to law enforcement. In re Layton | 2023-Ohio-3344 | Court of Claims | 08/16/2023 In appeal of administrative denial of victims of crime compensation application for counseling expenses and protection order fees where applicant asserted repeated incidents of domestic violence and rape by former husband where application was denied on reasoning that applicant did not report the incident to law enforcement, R.C. 2743.60(A), magistrate recommends that the applicant qualifies as a victim of criminally injurious conduct, that applicant reported the conduct to law enforcement when she provided emergency civil protection order to the sheriff, that the Attorney General's final decision be reversed, and that the claim be remanded for calculation of economic loss, R.C. 2743.61(B).

Declaratory action/Mootness. Highland Tavern, L.L.C. v. DeWine | 2023-Ohio-2577 | Supreme Court of Ohio | 08/01/2023 In tavern's action to declare unconstitutional state commission's emergency rule related to restriction on sale of alcohol in response to COVID-19 pandemic where the court of appeals ruled that the declaratory judgment action improperly sought to bypass the administrative appeal process, the judgment of the court of appeals is vacated and the case is remanded to the trial court with instructions for it to dismiss the action because the emergency rule is no longer in effect and the appeal and underlying case are moot.

Animal

Dogs/Ordinance/Statute. Girard Zoning Dept. v. Wolfe | 2023-Ohio-3301 | 11th Appellate District | 09/18/2023 In city zoning department's action against resident seeking removal of resident's dogs where city asserted that resident kept dogs in violation of city ordinance, trial court did not err in ruling that the city ordinance was unconstitutional as being in conflict with a statutory general law since R.C. Ch. 955 is a general law prescribing a rule of conduct for citizens generally as it relates to dog owners, the city ordinance altered the statutory definition of a dangerous or vicious dog to include a specifically named breed, and the statute positively permits what the city ordinance prohibits.

Civil Rights

Discrimination/Sex/Summary judgment. Gilliland v. Adams | 2023-Ohio-3083 | 2nd Appellate District | 09/01/2023 In business owner's sex discrimination action against bank employee where business owner alleged that bank employee initiated inappropriate quid pro quo sexual harassment while assisting business owner with her business account, trial court erred in granting summary judgment to bank employee since there was some evidence that business owner asked for a business loan and did not receive one, and the question remains as to whether business owner was denied full enjoyment of bank's accommodations, pursuant to R.C. 4112.02(G) and Kinnison.

Construction

Fraud/Arbitration/Hearing. Snyder v. Old World Classics, L.L.C. | 2023-Ohio-4019 | 9th Appellate District | 11/06/2023 In homeowners' action against builder, alleging, inter alia, fraud during construction of the home, trial court erred in granting builder's motion to stay and to compel arbitration without a

Construction (Continued)

hearing from the Supreme Court of Ohio has not addressed the issue whether an oral hearing is mandatory under R.C. 2711.03; absent further direction from the Supreme Court and consistent with the instant court's precedent, an oral hearing should have been conducted on builder's motion pursuant to the language in the statute.

Subcontractor/Unjust enrichment/ Project owners. VMI Group, Inc. v. Capstone Constr. Co., L.L.C. | 2023-Ohio-3882 | 8th Appellate District | 10/26/2023 In subcontractor's unjust enrichment action against general contractor and project owners for failure to make agreed payment for completed work, trial court erred in finding that general contractor was available for judgment and in dismissing claims against project owners where, although general contractor participated in the case, it was insolvent, it was not conducting business, and it failed to recover on its own claims against project owners, so there was no possibility of subcontractor having double recovery because res judicata would bar further payment among parties; before a subcontractor may pursue an unjust enrichment claim against an owner, it must be established that the general contractor is unavailable for judgment and unable to pursue the owner for the money that the subcontractor is seeking.

Consumer

Consumer Sales Practices Act/ Damages/Attorney fees. Jeter v. Kruz 'N' Kleen, L.L.C. | 2023-Ohio-4165 | 6th Appellate District | 11/17/2023 In vehicle purchaser's action against dealership, alleging violations of the Consumer Sales Practices Act by failing to give notices in repossessing purchaser's vehicle, resulting in partial summary judgment in favor of plaintiff, trial court's calculation of attorney fee award to plaintiff is affirmed where the case was relatively simple and could be handled by a general practice attorney, rather than a consumer law attorney, and the court properly focused on determining the reasonable hourly rate and in so doing, the trial court considered the Prof. Cond.R. 1.5(a) factors, then used that hourly rate to determine the lodestar amount, and no further adjustments to the lodestar were made, so the trial court used the correct procedure as set forth in Phoenix Lighting.

Construction/Violation/Damages/ Attorney fees. Goomai v. H&E Ent., L.L.C. | 2023-Ohio-3901 | 1st Appellate District | 10/27/2023 In property owners' action for breach of contract and violation of the Deceptive Trade Practices Act (DTPA) against renovation company for failure to perform as promised under the parties' contract, where jury found in favor of owners on both claims but awarded damages only on their breach of contract claim, trial court erred in denying owners' motion for attorney fees since attorney fees are allowed to the prevailing party for violation of the DTPA, R.C. 4165.03(B), and although the jury did not award money damages to owners under the DTPA, owners qualified as the prevailing party because judgment was rendered in their favor and attorney fees are allowed based on the type of action rather than on whether damages are awarded to remedy the violation.

Consumer Sales Practices Act/ Damages. Scott v. First Choice Auto Clinic, Inc. | 2023-Ohio-3855 | 10th Appellate District | 10/24/2023 In plaintiff's action against defendant-auto body shop, alleging that defendant damaged auto parts that plaintiff had purchased to fix alignment problems and that defendant failed to fix alignment problems, trial court erred in awarding plaintiff treble damages under the Consumer Sales Practices Act where plaintiff was entitled to either rescission or to actual economic damages, R.C. 1345.09, but plaintiff did not prove a violation of the Act based on poor workmanship and therefore could not recover actual economic damages, and treble damages could only be awarded when actual economic damages were awarded.

Consumer Sales Practices Act/Billing error/Affidavit. Myers v. Univ. Hosps. Health Sys. | 2023-Ohio-3045 | 9th Appellate District | 08/30/2023 In plaintiff's action against defendant-hospital, alleging violation of the Consumer Sales Practices Act (CSPA) and related claims based on a billing error, which led to plaintiff's account being turned over to a collection agency, summary judgment in favor of defendant was error where plaintiff's affidavit was acceptable for purposes of Civ.R. 56(E) and was not required to be corroborated by other evidence, and questions remain as to whether plaintiff's claims arose from a consumer transaction, R.C. 1345.01(A), and, if so, whether the nature of the transaction fell within the CSPA or gave rise to a defense.

Contracts

Settlement agreement//Party/Third-party beneficiary. In re Estate of Goode | 2023-Ohio-4253 | 3rd Appellate District | 11/27/2023 Following decedent's estate's settlement of underlying wrongful death action, trial court did not err in denying state's claim for full reimbursement of money expended through its Medicaid program on behalf of decedent where the state was not a party to the settlement agreement, the language of the agreement did not indicate an intent to benefit the state or any outside party, and the state had no enforceable rights as a third-party beneficiary.

Breach/Garnishment/Prior security interest. Wulco, Inc. v. O'Gara Group, Inc. | 2023-Ohio-4023 | 12th Appellate District | 11/06/2023 In plaintiff-military supplier's breach of contract action against defendant-tactical vehicle manufacturer for failure to pay for goods purchased, resulting in judgment for plaintiff and in a garnishment order, trial court erred in ordering garnishment of defendant's bank account funds where intervenor-third party presented a valid defense to garnishment by showing that it had earlier perfected a security interest in defendant's bank account, and intervenor's interest was not stripped when account funds were transferred to the clerk of courts, R.C. 1309.332(B), where the funds were transferred to the clerk pending resolution of any objection to the garnishment order, R.C. 2716.13.

Breach/Default judgment/Service. Sanders & Assocs., LPA v. Responsive Surface Technology, L.L.C. | 2023-Ohio-3990 | 1st Appellate District | 11/03/2023 In law firm's breach of contract action against business for claims relating to unpaid legal fees, where trial court granted firm a default judgment, trial court erred in denying business' motion to vacate the judgment where service requirements in Civ.R. 4.1(A)(1) were not satisfied because the return receipt filed in this case fails to comport with Civ.R. 4.1 in that the address line and signature line both contain nothing more than smudges, and the return receipt provided only that it was delivered in a particular city, with no specific address, and business' employee testified that certified mail was not delivered to correct address.

Breach/Magistrate's decision. TNSWS, L.L.C. v. Ohio Dept. of Rehab. & Corr. | 2023-Ohio-3718 | Court of Claims | 10/12/2023 In employment company's action against state department for

failure to provide transfer of data concerning released inmates during the term specified in the parties' memorandum of understanding, after considering both parties' objections to magistrate's decision, judgment on liability for breach of contract is rendered in favor of plaintiff where the plain language of the memorandum provides for department's initial manual transfers and implementation of community supervision system during the term of the memorandum to allow for daily electronic transfer of data to occur, Civ.R. 53(D).

Breach/Modification/Timeliness. Treadway Gallery, Inc. v. Baylor | 2023-Ohio-3642 | 1st Appellate District | 10/07/2023 In art gallery's breach of contract action against purchaser of painting for failure to make payment after purchaser disputed the painting's authenticity and gallery texted purchaser that it would agree to wait for payment until it provided a certificate of authenticity, which it did not do until after filing the instant action, summary judgment in favor of gallery was error where gallery's agreement to wait for payment constituted a modification of the parties' contract, and the question remains as to whether the gallery tendered the certificate within a reasonable time.

Breach/Fine/Indemnification/Common law/Notice/Dissent. Wildcat Drilling, L.L.C. v. Discovery Oil & Gas, L.L.C. | 2023-Ohio-3398 | Supreme Court of Ohio | 09/27/2023 In case in which oil well driller and oil company entered into a contract that required driller to indemnify company for payment of any environmental fine or penalty related to the well-drilling operations where driller refused to indemnify company after company had paid a fine to the state, resulting in each party filing a breach of contract claim against the other, the court of appeals erred in ruling in favor of driller, based on company's failure to notify driller of fine and payment, since the plain language of the parties' contract is clear—it does not matter that the company did not provide driller with notice of the fine before company entered into a voluntary settlement of the fine because driller is required to indemnify company for liabilities arising from the well-drilling violation under the broad language in the contract, and the indemnification provision in the contract between driller and company evinces a clear intent by the parties to deviate from the common-law notice requirements for indemnification under Globe Indemn. Co.; there are dissenting opinions in this case.

Breach/Standing/Limitations/Laches. Brook Park v. Cleveland | 2023-Ohio-3365 | 8th Appellate District | 09/21/2023 In plaintiff-city's action for breach and specific performance of contract providing that defendant-city would purchase residential property to expand defendant's airport, resulting in defendant's decision to unilaterally halt the program, trial court erred in granting summary judgment to defendant where plaintiff had standing as a contracting party, plaintiff filed the complaint within the amended statute of limitations, R.C. 2305.06, defendant's claim that an order of specific performance would be inequitable is without merit since balancing of equities involves weighing evidence, inappropriate on summary judgment, and the defense of laches does not apply since an option under the contract expired only a year before the action was filed; also, the plan for acquiring land did not involve eminent domain.

Breach/Asset purchase. Zoar View Wilkshire, L.L.C. v. Wilkshire Golf, Inc. | 2023-Ohio-2848 | 5th Appellate District | 08/14/2023 In asset purchaser's breach of contract action against sellers for dispute over which equipment was included in the asset purchase, trial court erred in granting sellers' Civ.R. 12(C) motion for judgment on the pleadings where purchaser alleged that sellers retained proceeds from independently selling golf carts, in contravention of the parties' purchase agreement, and the question remains whether the golf carts were equipment listed as acquired assets in the asset purchase agreement.

Breach/Assignment/Standing. OLB Group, Inc. v. Blue Square Resolutions | 2023-Ohio-2694 | 1st Appellate District | 08/04/2023 In plaintiff-business asset purchaser's action against defendant-credit card processor alleging, inter alia, breach of contract for failure to pay residual fees from transactions specified in contract between former asset owner and defendant, judgment in favor of plaintiff was error since the contract for residual fees specifically prohibited former asset owner's assignment of its rights without defendant's written consent, and because defendant did not consent to the assignment and plaintiff was not a party to the residual fee contract or was not an intended third-party beneficiary, plaintiff lacked standing to bring claims.

Corporate and Business

Accounting/Winding up/Torts/Limitations. Francisco A. Mateo M.D., Inc. v. Proia | 2023-Ohio-3908 | 7th Appellate District | 10/26/2023 In plaintiff-physician's accounting/winding up action against defendants-partner and clinic, claiming that defendants fraudulently received excess distributions, resulting in judgment for plaintiff, trial court erred in eliminating a portion of the award entered against defendants, corresponding to the amount of award entered against defendant-partner's wife, where trial court ruled that damages against wife were barred by the statute of limitations for certain torts, but elimination of damages against wife did not affect plaintiff's recovery on the accounting/winding up claim because it did not rely on tort claims and was not subject to the tort statute of limitations.

Fiduciary duty/Promissory note/Director resolutions. Superior Mobile Homes, Inc. v. Massasauga Rattlesnake Ranch, Inc. | 2023-Ohio-3764 | 11th Appellate District | 10/16/2023 In plaintiff-corporation's action to recover on a cognovit promissory note where defendant-corporation filed a third-party complaint against corporate secretary who executed the note, alleging breach of fiduciary duty, trial court erred in granting summary judgment to defendant-corporation on its third-party complaint since corporation's director resolutions provided that the corporate secretary, at his sole discretion, was authorized to execute legal contracts, and although the corporate secretary was not allowed to solely execute banking transactions, the loan in question was not a bank loan.

Limited partnership/Equitable relief/Contract. Aurora Hill, Ltd. v. Bremner | 2023-Ohio-3766 | 11th Appellate District | 10/16/2023 In plaintiff-business' action seeking recovery of partnership funds allegedly improperly retained by defendant, in violation of limited partnership agreement, summary judgment in favor of defendant was not error where plaintiff was seeking unspecified equitable relief, the complaint was construed as a claim for unjust enrichment, and plaintiff failed to plead breach of contract; because the matter at issue was derivative of the partnership agreement, it was governed by an express contract, precluding equitable relief.

Corporate and Business (Continued)

Trade secrets/Definition/ Misappropriation/Preemption. Hanneman Family Funeral Home & Crematorium v. Orians | 2023-Ohio-3687 | Supreme Court of Ohio | 10/12/2023 In plaintiff-funeral home's action against defendants-former director and competitor funeral home, alleging trade secret misappropriation, arguing that former director copied plaintiff's list of customers who had preneed funeral contracts with plaintiff and that defendants used the list to solicit business, summary judgment in favor of defendants is affirmed since the customer list did not qualify as a trade secret under the Ohio Uniform Trade Secrets Act where the contents of the list was readily ascertainable, including as a public record from the state funeral directors board, and information qualifies as a trade secret only when it has economic value because it is not generally known to, or readily ascertainable by proper means by, other persons who can obtain economic value from its use and the owner of the information has taken reasonable efforts to maintain its secrecy, R.C. 1333.61(D); also, the Act expressly supersedes other civil remedies sounding in tort that are based on the misappropriation of a trade secret.

Dissenters' rights/Value of interests. Miller v. Mission Essential Group, L.L.C. | 2023-Ohio-3077 | 10th Appellate District | 08/31/2023 In minority members' dissenters' rights action against LLC, seeking a determination of fair cash value of their interests in the company, trial court erred in applying minority and marketability discounts to assess the value of members' interests where application of discounts is allowed, but not required, pursuant to R.C. 1705.42; here discounts were inappropriate because discounting members' interests resulted in a windfall to majority member, who would become sole owner of business.

Receiver/Privilege. Mehwald v. Atlantic Tool & Die Co. | 2023-Ohio-2778 | 8th Appellate District | 08/10/2023 In family close corporation dispute in which son claimed wrongful termination and related claims, trial court erred in sua sponte appointing a receiver where the circumstances did not warrant the appointment of a receiver without the trial court giving the parties the opportunity to brief the issues to address whether the appointment was necessary, without the court holding a hearing, and without the court indicating what evidence it considered and which circumstances under R.C. 2735.01 were applicable; as well, trial court erred by extending the attorney-client relationship to son on the basis of privity, entitling him to any and all communications, records, or files, privileged or otherwise, between the close corporation and its attorneys.

Criminal

Weapon offenses/Carrying a concealed weapon/Sufficiency. State v. Coran | 2023-Ohio-3909 | 2nd Appellate District | 11/27/2023 Conviction of carrying a concealed weapon, a fourth-degree felony, R.C. 2923.12(A), was not supported by sufficient evidence since the state adduced insufficient evidence to prove beyond a reasonable doubt that there was ammunition loaded in the firearm or readily at hand; however, as defendant concedes, the evidence was sufficient for defendant to be convicted of, and re-sentenced for, the first-degree misdemeanor form of that offense; also discussed, defendant did not demonstrate plain error in his failure to raise a constitutional argument concerning the application of the Second Amendment to the U.S. Constitution in this case.

Evidence/Forensic examiner/Bolstering. State v. Colonel | 2023-Ohio-3945 | 4th Appellate District | 11/25/2023 In a conviction of rape and gross sexual imposition, forensic examiner did not give an opinion of the truthfulness of the statements the victim made during the examiner's interview with the victim since the examiner never gave an opinion of the victim's truthfulness, and the court of appeals found that even if the examiner's testimony could be construed in that manner, it was permissible bolstering, not vouching, since the examiner only testified that the victim's statements were consistent with sexual abuse, not that she believed the victim or that the victim was telling the truth, Stowers.

Arson registry/Life-time registration/ Reduction/Separation of powers. State v. Daniel | 2023-Ohio-4035 | Supreme Court of Ohio | 11/09/2023 On certified conflict of the court of appeals' decisions in a conviction by plea to arson, R.C. 2909.03(B)(1) and (D)(1),(2), challenge to the imposition of life-time registration to arson registry, R.C. 2909.15(D)(2)(b), as an unconstitutional violation of separation of powers because it does not permit the trial judge to reduce the period of registration unless requested by the prosecutor and the investigating law enforcement agency is without merit because reducing an arson offender's registration period under R.C. 2909.15(D)(2)(b) does not involve the sentencing of a defendant convicted of a crime since the registration requirement is not part of the criminal sentence and, even if it is, the legislature is authorized to prescribe criminal sentences, and the decision whether to recommend a reduced registration period is not judicial in nature since it is not involved in the guilt-determination process.

Evidence/Drug identification/Operable firearm/Other acts. State v. Morris | 2023-Ohio-4021 | 3rd Appellate District | 11/06/2023 In a conviction of, inter alia, nine drug offenses, including aggravated trafficking in drugs, R.C. 2925.03(A)(2), and having weapons while under disability, R.C. 2925.02(A)(3), the state sufficiently established the identity of a controlled substance by using an online database that indicates what a drug is by its imprinted markings, and witness testimony presented by the state that defendant had an operable firearm by seeing him place bullets in a pistol was admissible, and the trial court did not admit any testimony that was inadmissible under Evid.R. 404(B); the trial court did commit error by imposing court-appointed counsel fees as part of the sentence.

Right to counsel/Re-sentencing. State v. Bond | 2023-Ohio-3996 | 2nd Appellate District | 11/03/2023 Following a conviction of felonious assault, the court of appeals affirmed the conviction but reversed the sentence because the trial court erred at sentencing by failing to provide defendant with the mandatory Reagan Tokes Act notices regarding the rebuttable presumption that he would be released from prison at the expiration of the minimum sentence imposed, defendant was not represented by counsel during the re-sentencing videoconference and there is no evidence in the record that defendant waived his right to have counsel present, and also at the time of the re-sentencing hearing, there was a motion pending before the trial court requesting appointment of new counsel to represent defendant.

Self-defense/Jury instruction. State v. Brooks | 2023-Ohio-3986 | 5th Appellate District | 11/02/2023 On remand from the Ohio Supreme Court, the court of appeals holds the trial court erred by not giving a self-defense instruction pursuant to R.C. 2901.05 in a conviction of, inter

alia, aggravated burglary and domestic violence since "R.C. 2901.05(B)(1) triggers the state's duty to disprove self-defense so long as 'there is evidence presented that tends to support that the accused person used the force in self-defense, Messenger,' " and defendant's testimony tends to support her claim that she used force in self-defense, and thus it was necessary, not discretionary, for the trial court to instruct the jury on the elements of self-defense.

Committed persons/Change in movement level/Threat to public safety. State v. Riddle | 2023-Ohio-3943 | 11th Appellate District | 10/30/2023 After being committed upon being found not guilty by reason of insanity, R.C. 2945.401, the trial court erred by denying movement level change of appellant based on his history of violence and psychotic symptoms since R.C. 2945.401(G)(2) places the burden on the state to prove by clear and convincing evidence "that the proposed change represents a threat to public safety or a threat to the safety of any person" and appellant's history was not a factor to be considered because the court was to determine whether the change, based on appellant's present circumstances and condition, represents a threat to public safety or the safety of any person, and the state did not present any evidence that appellant has any current violent tendencies, current psychotic behavior, current antisocial behavior toward other patients or hospital staff or current inability to abide by hospital rules.

Sentencing/Aggravated murder/ Merger/Kidnapping. State v. Cottrell | 2023-Ohio-3932 | 12th Appellate District | 10/30/2023 Conviction of, inter alia, two counts of aggravated murder, R.C. 2903.01(B), and kidnapping, R.C. 2905.01(B)(2), involving the death of a female and her unborn child, met the sufficiency and weight of evidence standards where there was sufficient evidence that defendant committed a kidnapping which directly led to the murder of the victim and the unlawful termination of her pregnancy and, although the jury found defendant guilty of two additional counts of aggravated murder pursuant to R.C. 2903.01(A), he was never sentenced on those charges because they were merged with the R.C. 2903.01(B) aggravated murder charges, and no final, appealable order exists from an offense that has been merged for the purposes of sentencing, Crim.R. 32(C); also, the state presented evidence that defendant's actions necessarily resulted in a restraint of the victim's liberty for the purpose of killing her.

Murder/Aiding and abetting/Self-defense. State v. Smith | 2023-Ohio-3919 | 5th Appellate District | 10/27/2023 Conviction of murder and/or aiding and abetting murder, R.C. 2903.02(A), met the sufficiency and weight of evidence standards where defendant's claim that another person shot the victim in self-defense is not an available defense for defendant, and two witnesses testified that both defendant and the other person were firing guns, and two of defendant's own witnesses testified the other shooter called defendant, who was the other shooter's friend, to come over to the house where the victim was shot after the other shooter and the victim became hostile with one another, and the court of appeals found no evidence in the record to support a conclusion that the jury lost its way in sorting out conflicts in evidence or in making its credibility determinations.

Prosecutorial misconduct/Lack of prejudice. State v. Howard | 2023-Ohio-3870 | 8th Appellate District | 10/26/2023 In a conviction of gross sexual imposition and three counts of forcible rape, although the prosecutor committed misconduct by stating during cross-examination of defendant and in closing argument that defendant's semen was in the rape kit, even though there was no evidence submitted supporting those statements, defendant was not prejudiced by the statements since the victim's detailed testimony about the events that occurred is substantially similar to the narrative account that the victim gave the sexual-assault nurse examiner, and the examiner's testimony and the rape kit report support the victim's testimony and defendant's admission that he engaged in oral sex with her since defendant's DNA was in the rape kit, even if no semen was detected in the rape kit.

Sentencing/Judicial bias. State v. Vega | 2023-Ohio-3885 | 8th Appellate District | 10/26/2023 In a conviction by plea to improper handling of a firearm in a motor vehicle, R.C. 2923.16(B), sentence is contrary to law because the record does not support the imposition of the near maximum sentence where at the sentencing hearing, defense counsel recounted on the record how the trial court had stated that "Lady Justice was raped today" when defendant was acquitted of other serious offenses in a separate case and, although the trial court indicated that it "accepts all verdicts," it did not deny having made the egregious comment, the court sentenced defendant to the near-maximum sentence even though he had virtually no criminal record and despite the presumption of community control set forth in R.C. 2929.13(B)(1) for his fourth-degree felony.

New trial/Suppression of evidence/ Jury-selection procedures. State v. Hale | 2023-Ohio-3894 | 8th Appellate District | 10/26/2023 Upon reconsideration, the court of appeals vacates its prior opinion and holds that defendant established a prima facie case that he was unavoidably prevented from moving for a new trial within the time specified in Crim.R. 33(B), based on the alleged suppression of evidence by the state, and also because of defendant's late discovery of the jury-selection procedures in the county that the trial was held, concerning defendant's claim of racial bias in the exclusion from the jury pool of African Americans convicted of a felony, but the trial court did not err by not addressing the petition for post-conviction relief that was incorporated into the motion for a new trial attached to defendant's motion for leave; case is remanded with instructions to grant defendant's motion for a new trial; judgment is affirmed in part, reversed in part and remanded for further proceedings.

Sentencing/Consecutive sentences/ Appellate review. State v. Gwynne | 2023-Ohio-3851 | Supreme Court of Ohio | 10/25/2023 On a motion for reconsideration by appellee state, the Ohio Supreme Court grants the motion and holds that the court of appeals properly applied the plain language of R.C. 2953.08(G)(2) in holding that after reviewing the sentence imposed, the statute requires a court of appeals to defer to the trial court's R.C. 2929.14(C)(4) consecutive-sentence findings and to uphold those findings unless the court of appeals could not clearly and convincingly find that the record did not support the trial court's consecutive-sentence findings; decision of the Ohio Supreme Court in State v. Gwynne, 2022-Ohio-4607, is vacated and judgment of the court of appeals upholding the consecutive prison sentence is affirmed.

Felony murder/Infant/Competing expert testimony. State v. Mounts | 2023-Ohio-3861 | 1st Appellate District | 10/25/2023 Conviction of felony murder, R.C. 2903.02(B), for the death of defendant's seven month-old son met the sufficiency and weight of evidence standards since,

although there was competing expert testimony concerning the medical evidence of the cause of death, each of the state's expert witnesses testified that there was fresh blood near the fracture site and no evidence of healing, indicating that infant's injuries were recent and, though defendant's expert witnesses testified to the contrary, the jury was free to give less weight to their testimony and more weight to the testimony of hospital physicians who had physically evaluated the infant, and the jury did not lose its way and create a manifest miscarriage of justice in light of the evidence presented.

Confrontation Clause/Non-testimonial/Hearsay. State v. Walker | 2023-Ohio-3852 | 10th Appellate District | 10/24/2023 In consolidated appeals in four cases of convictions of, inter alia, murder, grand theft and robbery, the trial court did not err by admitting a dashcam video with an individual's statements while in a police cruiser since statements were made to an individual who was a paramedic, and the Confrontation Clause was not violated by the admission of the statements that were made to the paramedic, indicative of reactive, rather than reflexive, thinking, and thus the statements were non-testimonial, nor were statements impermissible hearsay since they were excited utterances under Evid.R. 803(2) and also admissible under the exception for statements for purposes of medical diagnosis or treatment, Evid.R. 803(4).

Sexual offenses/Sexual imposition/Substantial impairment. State v. Jordan | 2023-Ohio-3800 | Supreme Court of Ohio | 10/24/2023 In a conviction of two counts of sexual imposition, R.C. 2907.06(A)(1) and (A)(2), that were merged as allied offenses of similar import, there was sufficient evidence that defendant-staff person at a facility for visually impaired persons had knowledge of the victim's substantial impairment since "substantial impairment" under R.C. 2907.06(A)(2) can be proved both by the defendant's knowledge of the victim's blindness and evidence of the nature of the interactions between defendant and the developmentally disabled victim, and the evidence before the jury was sufficient for it to find that defendant knew that the victim's blindness, coupled with her developmental disabilities, substantially impaired her ability to appraise the nature of and control defendant's conduct.

Disorderly conduct. State v. Stone | 2023-Ohio-3842 | 11th Appellate District | 10/23/2023 Bench convictions of disorderly conduct through intoxication, R.C. 2917.11(B)(2) in one case, and disorderly conduct, R.C. 2917.11(A) in a second case, was not supported by sufficient evidence in the first case since defendant's merely swaying against a van did not constitute affirmative conduct creating a condition presenting a risk of physical harm to him or anyone else, and there was no evidence that he smelled of alcohol, had slurred speech or that there was any alcohol near him; but in the second case, the weight of evidence supports the conviction under R.C. 2917.11(A)(2), since testimony shows defendant acted recklessly with heedless indifference when he was screaming offensive, abusive and insulting language at medical personnel while kicking and spitting at them, causing personnel to restrain him.

Evidence/Authentication. State v. Schmidt | 2023-Ohio-3845 | 3rd Appellate District | 10/23/2023 In a conviction of four counts of unlawful sexual conduct with a minor, R.C. 2907.04(A), (B)(3), admission of state exhibits from victim's phone of text messages from defendant was not error where victim testified that the "person" sending her text messages knew and discussed intimate details that only she and defendant would know, and the exhibits were properly authenticated since the trial court could determine that the state presented evidence sufficient to support a finding that the text messages were written and sent by defendant; also discussed, consecutive sentences.

Court costs/Extradition expenses. State v. Dennis | 2023-Ohio-3815 | 2nd Appellate District | 10/20/2023 In a conviction by plea to rape, with the trial court imposing extradition expenses of $1,912.24 on defendant, the state concedes that the trial court erred in imposing the costs of extradition without considering whether defendant was indigent or had the ability to pay, R.C. 2947.23(C), where the trial court had a blanket policy of not waiving extradition expenses; remanded to determine whether the costs of extradition should be waived based on a consideration of the individual facts and circumstances.

Sentencing/Consecutive sentences/Repeat violent offender. State v. Moore | 2023-Ohio-3831 | 7th Appellate District | 10/20/2023 In a conviction of aggravated arson, R.C. 2909.02(A)(1) and (B)(2), and aggravated arson, R.C. 2909.02(A)(2) and (B)(3), both with a repeat violent offender (RVO) specification, R.C. 2941.149, and imposition of consecutive prison sentences totaling 23 years to 28.5 years with a RVO specification, the trial court failed to make the requisite consecutive sentence findings or the RVO findings at the sentencing hearing or in the sentencing entries; sentence is vacated and cause is remanded for a new sentencing hearing; on re-sentencing, if the trial court again sentences defendant consecutively and imposes a period of imprisonment on the RVO specifications, the court shall state the findings on the record at the sentencing hearing and in its sentencing entry, R.C. 2953.08(G)(1), 2929.14(C)(4) and (B)(2)(e).

Habeas corpus/Competency evaluation. Massoud v. Pretel | 2023-Ohio-3811 | 8th Appellate District | 10/19/2023 In petitioner's action for a writ of habeas corpus to order county sheriff to release him from custody, the court of appeals grants the writ, finding that the trial court appears to have ordered petitioner remanded into custody for the purpose of a mental evaluation after allowing him to change his plea to not guilty by reason of insanity, but nothing in R.C. 2945.37 or 2945.371, governing hearings and evaluations on a defendant's competency, states that a defendant must be confined in jail in order for a competency evaluation to occur, R.C. 2945.371(C)(2) has a specific procedure governing the exact process to be employed in this situation, and the trial court made no findings that would justify bail revocation, but only that it was for the convenience of the court psychiatric clinic.

Aggravated menacing/Due process/Weight of evidence. Cleveland v. McCoy | 2023-Ohio-3792 | 8th Appellate District | 10/19/2023 Bench conviction of municipal code first-degree misdemeanor aggravated menacing is reversed since the court failed to provide defendant a closing argument that would have allowed his counsel an opportunity to request any lesser-included offense based on the evidence presented, denying defendant due process and a fair trial; although sufficient evidence was presented to demonstrate that defendant's conduct caused the victim to believe that defendant would cause him serious physical harm, the victim's own conduct and responses reveal that defendant's conviction is against the weight of evidence.

Plea/Validity/Restitution. State v. Craig | 2023-Ohio-3777 | 1st Appellate District | 10/18/2023 In a conviction by defendant's guilty plea to operating a vehicle while under the influence of alcohol and/or drugs, the trial court erred in accepting defendant's no-contest plea to driving left of center because the plea was not entered knowingly, intelligently and voluntarily where the court failed to comply with Traf.R. 10(D), mirroring Crim.R. 11(E), setting forth the trial court's obligations when accepting a plea of guilty, no contest and not guilty; also, the court erred in imposing a restitution amount without determining the value of the vehicle prior to the accident.

Search/Google search history/Harmless error. State v. Grace | 2023-Ohio-3781 | 5th Appellate District | 10/17/2023 In a conviction of complicity to aggravated burglary, R.C. 2911.11(A)(1)/(B), although the court of appeals found that the trial court erred by denying a motion to suppress evidence because the search warrant violated the Fourth Amendment requirement of particularity, rendering invalid the search of defendant's Google account and Google search history, since defendant has not challenged the sufficiency and weight of the evidence of her conviction, the court of appeals upholds the conviction, finding beyond a reasonable doubt that the evidence concerning a Google search for how to rinse off mace did not contribute to defendant's conviction, nor does the improperly admitted testimony of the elements involved in the Google search overcome the overwhelming evidence supporting the finding that defendant participated in the crime of burglary as found by the jury.

Appeal/Re-opening/Sentencing. State v. Brodie | 2023-Ohio-3743 | 9th Appellate District | 10/16/2023 In an application to re-open appeal, App.R. 26(B), the trial court's judgment is affirmed as to the issues raised in the direct appeal, but reversed to the extent that this matter must be remanded for re-sentencing since the initial appellate counsel failed to challenge the legality of the sentence where appellant's offenses took place prior to the effective date of the amendments to R.C. 2929.14(A), and he was not subject to an indefinite prison term but was nonetheless sentenced to one, and appellate counsel was ineffective in failing to raise the issue on appeal.

Plea/Advisements/Maximum penalty. State v. Amin | 2023-Ohio-3761 | 11th Appellate District | 10/16/2023 In a conviction by plea to attempted aggravated arson, R.C. 2909.02(A)(3) and 2923.02(A), the trial court's advisement to defendant of the maximum penalty she faced was wholly deficient since the trial court and prosecutor communicated contradictory information to defendant during the plea hearing and no effort was made to explain the significance of definite and indefinite sentencing under the Reagan Tokes Law, constituting a complete failure by the trial court to comply with Crim.R. 11(C) and eliminating defendant's burden to demonstrate she was prejudiced by the trial court's error, Mullins.

Ineffective assistance/Fine. State v. Murray | 2023-Ohio-3762 | 11th Appellate District | 10/16/2023 In a conviction by plea to aggravated possession of drugs, defense counsel provided ineffective assistance since, if counsel had filed an affidavit of indigency, there was a reasonable probability the trial court would not have imposed a fine where the pre-sentence investigation report revealed evidence of indigency since defendant is on government assistance, has a limited educational background and has an extensive criminal history; remanded to allow defendant to file an affidavit of indigency and for a hearing to determine her indigency status pursuant to R.C. 2929.18(B)(1) and 2929.19(B)(5); also discussed, the trial court had no duty at the plea hearing to advise defendant that her right not to testify at trial could not be used against her.

Sentencing/Community control violation/Reserved sentence. State v. Thompson | 2023-Ohio-3722 | 1st Appellate District | 10/13/2023 In a conviction by plea to felonies in three cases, imposition and subsequent violation of community control and extension for an additional five years that again was violated, with the trial court imposing the 48 months of incarceration that represented the "reserved" prison terms the court referenced at the initial sentencing hearing, the trial court erred by failing to notify defendant at the initial sentencing hearing of the prison term that could be imposed for violating community control and, on remand for re-sentencing, the trial court may not impose a prison term since merely identifying a period of time as "reserved" is not sufficient to explain to lay persons that they could face a defined term of incarceration for a violation of community control, R.C. 2929.19(B)(4) and Ward.

Evidence/Exclusion/Relevancy/Hearsay. State v. Stalder | 2023-Ohio-3736 | 5th Appellate District | 10/13/2023 On remand from the Ohio Supreme Court following reversal of the court of appeals' holding that defendant established a prima facie case of purposeful gender discrimination in the removal of two prospective jurors by the state's exercise of two peremptory challenges in a prosecution of defendant for sexual imposition, the court of appeals holds that the trial court did not infringe on defendant's constitutional right to a fair trial by excluding evidence of the victim's termination from the carryout long after she was assaulted since not relevant, nor when the trial court denied into admission defense counsel's inquiry with an officer about statements made or not made by the victim since the statements were properly excluded as hearsay.

Sentencing/Failure to comply/License suspension. State v. Casiano | 2023-Ohio-3711 | 8th Appellate District | 10/12/2023 In an appeal by the state, the trial court erred by imposing a suspended prison sentence and an incorrect driver's license suspension term in a conviction by plea to, inter alia, failure to comply, R.C. 2921.331(B), where the trial court stated on the record and in the sentencing entry that a 36-month suspended sentence was imposed on the failure to control count, the sentence is contrary to law since under R.C. 2929.19(B) and prison terms and community-control sanctions are mutually exclusive and cannot be imposed at the same time on the same count of conviction, Anderson; also, R.C. 2921.331(E) and 4510.02(A)(1) provide that a Class One driver's license suspension is mandatory for the second failure to comply that is a felony, and thus the 36-month license suspension is contrary to law.

Sentencing/Reagan Tokes notifications. State v. Hatchell | 2023-Ohio-3713 | 8th Appellate District | 10/12/2023 In convictions in two cases by plea in one case to abduction, R.C. 2905.02(A)(1), burglary, R.C. 2911.12(A)(3), and improperly discharging into a habitation, R.C. 2923.161(A)(1), and in the other case to felonious assault, R.C. 2903.11(A)(1), with a three-year firearm specification, and having weapons while under disability, R.C. 2923.13(A)(2), the trial court failed to provide the Reagan Tokes Law R.C. 2929.19(B)(2)(c) notifications and case is remanded to provide defendant with the requisite notifications; also, the trial court's sentences on the abduction and

having weapons while under disability convictions are contrary to law and are remanded for re-sentencing.

Speedy trial/New charge. State v. Love | 2023-Ohio-3690 | 11th Appellate District | 10/10/2023 In convictions for resisting arrest, felonious assault and assaulting or harassing a police dog or horse, in which an officer received serious injuries caused by defendant while attempting to arrest defendant on warrants for parole violations, the trial court's denial of motion to dismiss the felonious assault charge for a speedy trial violation was not error since it was months after the initial injury before the officer knew that there would be permanent scarring on his wrist and permanent diminished sensation in his left wrist and hand; however, the facts supporting the supplemental indictment for harassing a police dog were known at the time of the initial indictment and were subject to defendant's speedy trial rights, and the resulting misdemeanor conviction is vacated.

Speedy trial/Incarceration on other charges/Notice. State v. Williams | 2023-Ohio-3647 | Supreme Court of Ohio | 10/10/2023 Court of appeals erred by reversing the trial court's grant of prisoner's motion to dismiss a new indictment for, inter alia, aggravated robbery on speedy trial grounds, R.C. 2941.401, since defendant was incarcerated on other charges when charged in the new case, and he satisfied the R.C. 2941.401 "causes to be delivered" requirement by providing written notices to the warden of the institution where he was then imprisoned and a request for final disposition, notwithstanding the warden's failure to deliver any of the notices to the prosecuting attorney and appropriate court.

Sex offender registration. State v. Reyes | 2023-Ohio-3644 | Supreme Court of Ohio | 10/10/2023 Judgment of the court of appeals is reversed on the authority of State v. Schilling, ___ Ohio St.3d ___ 2023-Ohio-3027, ___ N.E.3d ___, and cause is remanded to the court of appeals for further consideration based on the Ohio Supreme Court's holding in Schilling; appellant's motion to remand is denied as moot.

Sentencing/Post-release control. State v. Zachman | 2023-Ohio-3661 | 2nd Appellate District | 10/06/2023 In a conviction by plea to failure to comply, R.C. 2921.331(B), the trial court erred by advising defendant at disposition that he could be placed on post-release control (PRC) "for up to 2 years," and also, failed to advise defendant of the consequences of violating PRC at disposition, and the court's judgment entry was also incorrect in providing that PRC was optional for up to two years and its duration could be increased "up to a maximum term of eight years;" also discussed, jail-time credit.

Self-defense/Retreat. State v. Warth | 2023-Ohio-3641 | 1st Appellate District | 10/06/2023 In a conviction of two counts of felonious assault, R.C. 2903.11(A)(1) and (2), arising out of a confrontation of neighbors in which defendant shot an unarmed neighbor who was standing on a public sidewalk after initially confronting defendant and his mother while the neighbor was on their porch and defendant and his mother were standing behind a screen door in their house where, although defendant did not have a duty to retreat, R.C. 2901.09(B), fact finders may consider retreat evidence to determine who was at fault in creating the situation leading to the affray, and defendant approached his neighbor as she stood on a public sidewalk in front of defendant's house and he shot her twice while they were arguing, even though she displayed no weapon.

Violating a protection order/ Sentencing/Community control overbroad. State v. Allen | 2023-Ohio-3655 | 2nd Appellate District | 10/06/2023 Conviction of two fifth-degree felony charges of violating a protection order by defendant contacting his ex-wife's employer, the county sheriff's office, by two emails and phone calls, was not error since the terms of the protection order prohibited defendant from contacting his ex-wife's employer and defendant signed it; the trial court did err by imposing certain special conditions of community control that were unreasonably overbroad that unnecessarily limited defendant's speech and ability to arrange visitation to see his son; also discussed, joinder and ineffective assistance.

Sentencing/Invited error/Marsy's Law. State v. Thorp | 2023-Ohio-3629 | 8th Appellate District | 10/05/2023 In a conviction by plea to theft, telecommunications fraud, identity fraud and two counts of money laundering, defendant's acceptance of guilt to the charged theft offense that is not cognizable under the Ohio Revised Code is treated as invited error where plea was validly made, and the state's decision to reduce the degree of the theft offense originally charged to a felony of the second degree was made pursuant to the terms of a negotiated plea agreement; the provisions of Marsy's Law supersede the defendant's rights involving ability to pay under R.C. 2929.19(B)(5), Rudolph, but the state concedes that the trial court erred by imposing restitution in an amount that exceeded $223,000 where the trial court advised that was the maximum amount that could be imposed; also discussed, civil settlement implications.

Sentencing/Allied offenses/Res judicata. State v. Wooden | 2023-Ohio-3624 | 8th Appellate District | 10/05/2023 In a conviction by plea to attempted murder and attempted felonious assault where the court of appeals dismissed the first appeal for lack of a final, appealable order because the trial court failed to impose a sentence on the attempted felonious assault count, on a second appeal the court of appeals affirmed the convictions but vacated the sentences because the trial court failed to provide the violent-offender notice required by Sierah's Law and, on a third appeal, defendant's challenge to the trial court's imposition of compound sentences on the attempted murder and attempted felonious assault offenses, with defendant claiming that the sentences should have been merged as allied offenses, is barred by res judicata, Phillips.

Sentencing/Consecutive sentences/ Nunc pro tunc entry. State v. Frost | 2023-Ohio-3637 | 10th Appellate District | 10/05/2023 In a conviction by plea to voluntary manslaughter, R.C. 2903.03, and tampering with evidence, R.C. 2921.12, the state concedes error in the trial court's failure to make a consecutive sentence finding in the judgment entry, but a trial court's inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law, Bonnell; remanded with instructions for the trial court to correct the clerical mistake by a nunc pro tunc entry.

Pre-indictment delay. State v. Jenkins | 2023-Ohio-3622 | 8th Appellate District | 10/05/2023 Following a remand of two cases from the Ohio Supreme Court in which the Court held that the court of appeals erred in holding that defendants established they were prejudiced by the period of pre-

indictment delay and, on remand to the trial court, the trial court did not err when it reinstated the defendants' convictions of rape, complicity to commit rape and kidnapping where the evidence presented was sufficient to demonstrate the defendants did engage in sexual conduct with the victim by purposely compelling her to submit by force or threat of force; convictions are reinstated with original sentences.

New trial/Leave to file delayed motion/ Crim.R. 33(B). State v. Hale | 2023-Ohio-3626 | 8th Appellate District | 10/05/2023 Following a 2005 conviction of, inter alia, aggravated murder and imposition of, inter alia, the death penalty that was affirmed by the Ohio Supreme Court in 2008, the trial court abused its discretion in denying appellant's 2022 Crim.R. 33(B) motion for leave to file a delayed motion for a new trial since appellant established a prima facie case that he was unavoidably prevented from moving for a new trial within the time specified in Crim.R. 33(B) due to the state's suppression of evidence and the late discovery of the jury-selection procedures involving racial factors in Cuyahoga County; judgment is reversed and case is remanded to the trial court with instructions to grant appellant's motion; dissenting opinion.

Sentencing/Consecutive sentences/ Nunc pro tunc order/Jail-time credit. State v. King | 2023-Ohio-3635 | 8th Appellate District | 10/05/2023 In an appeal of conviction by plea to attempted robbery and assault, the state concedes the trial court erred: by imposing consecutive sentences for a misdemeanor and felony; entering a nunc pro tunc order for a matter not merely clerical; issuing a nunc pro tunc order after the case had been appealed; and by failing to include jail-time credit for days defendant had served in jail; remanded for re-sentencing and imposition of jail-time credit.

Right to counsel/Video recording of interview/Prejudice. State v. Newberry | 2023-Ohio-3623 | 8th Appellate District | 10/05/2023 In convictions of, inter alia, aggravated murder, the trial court did not err by admitting a video recording of an interview of defendant with police investigators where the beginning of the video included defendant consulting with his attorney, but that portion of the recording was not included in the video that the jury viewed, and nothing in the record suggests the state obtained information that it used or could have used at trial or in another way to be detrimental to defendant; also discussed, cell-phone records and ineffective assistance of counsel.

Sentencing/Merger/Rape/Kidnapping. State v. Williams | 2023-Ohio-3625 | 8th Appellate District | 10/05/2023 In a conviction of rape and kidnapping, the trial court did not err in not merging the offenses as allied offenses of similar import where the restraint was prolonged because it took place over several days, the confinement was secretive because the victim was placed into a private vehicle and then kept in a private apartment, and thus the kidnapping resulted in an increased risk of harm to victim.

Sentencing/Reagan Tokes Law notifications. State v. Searight | 2023-Ohio-3584 | 1st Appellate District | 10/04/2023 In a conviction by plea to two counts of fentanyl trafficking and two counts of fentanyl possession, all second-degree felonies, with the trial court merging the possession offenses with the trafficking offenses and imposing two concurrent prison terms of 3 to 4.5 years each, the trial court erred in failing to advise defendant of the Reagan Tokes Law sentencing hearing notifications required under R.C. 2929.19(B)(2)(c), a mandatory directive; remanded for proper sentencing notifications, Greene.

Search/Warrantless inventory search of vehicle. State v. Toran | 2023-Ohio-3564 | Supreme Court of Ohio | 10/04/2023 In a conviction by plea to carrying a concealed weapon, improper handling of a firearm in a motor vehicle and having a weapon while under a disability, the trial court's denial of motion to suppress evidence obtained during a valid traffic stop was not error since the warrantless search was lawful under the U.S. Const. Fourth Amendment where the failure to submit a copy of written inventory-search procedures into evidence in support of the inventory-search did not render the search per se unreasonable, and officer's testimony explaining the inventory-search policy, the enforcement requirements and whether the policy was followed, together with officer body-camera video of the inventory search, provided sufficient evidence to establish the existence of those procedures, that the officer who searched the vehicle complied with the policy and that the search was reasonable.

Sentencing/Defendant's presence. State v. Fadley | 2023-Ohio-3573 | 5th Appellate District | 10/03/2023 In a conviction by plea to aggravated trafficking and drug possession of methamphetamine, the trial court erred in sentencing defendant because the sentence pronounced on the record in defendant's presence differed from that stated in the judgment entry of sentence for the maximum term but, since the greater sentence made in the journalized entry was correct pursuant to the Reagan Tokes Law, case is remanded to the trial court for re-sentencing to impose the correct sentence in the presence of defendant in accordance with Crim.R. 43(A)(1).

Sentencing/Appointed counsel costs/ Civil assessment. State v. Saxer | 2023-Ohio-3548 | 6th Appellate District | 09/29/2023 In a conviction by plea to illegal conveyance of drugs onto the grounds of a detention facility, although the trial court did not err by imposing a prison sentence where the court considered the statutory criteria in R.C. 2929.11 and 2929.12, and considered defendant's present and future ability to pay the amount of the fine, costs of prosecution, court-appointed counsel costs and any supervision fees, but the court did err by failing to denominate the court-appointed-counsel fees as a civil assessment, Taylor; remanded to the trial court to include the civil assessment of the costs of appointed counsel in a separate judgment entry.

Animals/Failure to confine dog/ Abandoning animal/Registration. State v. Harding | 2023-Ohio-3508 | 2nd Appellate District | 09/29/2023 Convictions for failure to confine a dog, R.C. 955.22, and abandoning animals, R.C. 959.01, was not error since defendant was the owner, keeper or harborer of the dog because she had exercised physical possession and control over the dog when she took it to her residence and managed its care for a couple of days, and defendant admitted in her testimony that she should have kept the dog until she found it a home, but the conviction for failure to register a dog, R.C. 955.21, was error because there was no evidence presented establishing the dog was more than three months of age, and also, the time frame in which defendant found the dog prevented her from being able to comply with the registration requirements of R.C. 955.01.

Indictment/Dismissal/Spoilation of evidence. State v. Williams | 2023-Ohio-3526 | 11th Appellate District | 09/29/2023 In a prosecution for, inter alia, vehicular homicide and vehicular manslaughter, the trial court did not

err in granting a motion to dismiss an indictment based upon spoliation of evidence since the burden shifted from defendant to the state to demonstrate the destroyed evidence was not materially exculpatory where the trial court found that the motorcycle involved in the accident could have provided potentially useful evidence to the defense, and the evidence supports the conclusion that the trooper, with knowledge of the request for preservation as well as the motorcycle's location, did not place a hold on the vehicle and permitted its release to a third party that reasonably rose to the level of conscious wrongdoing.

Jury trial/Waiver. Columbus Pros. Office v. J.M. | 2023-Ohio-3555 | 10th Appellate District | 09/29/2023 In a bench trial conviction of domestic violence and assault, the trial court erred in conducting a bench trial without first obtaining, in open court, a valid waiver of defendant's right to a jury trial, and defendant's signing of a pre-trial document waiving trial by jury was not effective to waive defendant's right to a jury trial; also discussed, "omnibus" sentence.

Search/Motion to suppress/Probable cause. State v. Hopkins | 2023-Ohio-3585 | 7th Appellate District | 09/29/2023 In a conviction of, inter alia, murder, the trial court did not err in denying a motion to suppress evidence obtained through officer's use of a key found in the backseat of the car used in the shooting of a victim that was used to unlock the door to defendant's residence since officer's unlocking a door for the purpose of linking a suspect to a residence is such a minor search that it does not violate the Fourth Amendment, and the officer already had probable cause to believe the key belonged to defendant since his DNA was a major contributor to the sample found on that key, a photograph on defendant's Facebook page depicted the keychain hanging from his belt loop and officer used the key solely to turn the lock and he did not push the door open.

Plea/Conceded error. State v. Brown | 2023-Ohio-3536 | 6th Appellate District | 09/29/2023 In a conviction by Alford plea to abduction, domestic violence and failure to comply, plea was not validly made where the trial judge promised the defendant that concurrent sentences would be imposed on the abduction and domestic violence counts but failed to do so, and the state concedes error; remanded with instructions that defendant be given the opportunity to withdraw his pleas and proceed to trial.

Sealing/Findings on the record. State v. Fasnaugh | 2023-Ohio-3539 | 6th Appellate District | 09/29/2023 Trial court's denial of 2022 application to seal a dismissed 2008 indictment for gross sexual imposition, R.C. 2907.05(A)(1), and to seal a conviction by a plea of guilty to disorderly conduct, R.C. 2917.11(A)(2), for the same conduct was error since R.C. 2953.52 as the "non-conviction-sealing statute" and R.C. 2953.32 as the "conviction-sealing statute" both apply, and the trial court failed to make findings on the record balancing the requisite factors on the record as required by R.C. 2953.52(B)(2)(d) for sealing non-conviction records, and the trial court also failed to make findings on the record balancing the requisite factors as required by R.C. 2953.32(C)(1) for sealing the conviction records; reversed and remanded for the trial court to conduct the full analysis required by R.C. 2953.52 and 2953.32, and to place its findings on the record.

Sex offenses/DNA expert at state expense/Fair trial. State v. Ruiter | 2023-Ohio-3594 | 7th Appellate District | 09/29/2023 In a conviction of 73 counts of sex offenses, including rape, attempted rape, sexual battery and gross sexual imposition of defendant's minor stepdaughter and two minor daughters, the trial court's denial of defendant's motion for a DNA expert at the state's expense denied defendant a fair trial since a DNA expert was germane to a defense to the DNA lab report and the expert who testified for the state at trial, Mason; also discussed, gross sexual imposition convictions are affirmed; dissenting opinion that the state need not provide state-funded DNA expert to defendant.

Zoning/Poultry or livestock/Vagueness. State v. Carlson | 2023-Ohio-3514 | 9th Appellate District | 09/29/2023 In a bench conviction of violation of municipal zoning ordinance prohibiting "poultry or livestock" from being "kept on land within the Village," defendant's possession of ducks on her property did not violate the ordinance where defendant testified that they were kept as pets, and the prohibition as to "poultry" in the municipal ordinance is unconstitutionally void for vagueness since the word "poultry," without further definition, is vague in all its applications.

Sentencing/Earned credit. State v. Coons | 2023-Ohio-3506 | 2nd Appellate District | 09/29/2023 In a conviction by plea to gross sexual imposition and corrupting another with drugs, the trial court erred by finding defendant ineligible for any earned credit since, although there is a provision making defendant ineligible for credit for gross sexual imposition, R.C. 2967.193(A)(3) and (C)(3), there is no provision making defendant ineligible for reductions in his prison sentence for corrupting another with drugs.

Plea/Constitutional rights advisement. State v. Shannon | 2023-Ohio-3483 | 8th Appellate District | 09/28/2023 In a conviction by plea to fourth-degree felony theft, R.C. 2913.02(A)(1), the state concedes that the trial court failed to comply with Crim.R. 11(C)(2)(c) when it did not advise defendant of his constitutional rights prior to accepting his guilty plea, Brinkman.

Domestic violence/Parental discipline. State v. Brown | 2023-Ohio-3604 | 7th Appellate District | 09/28/2023 Conviction of domestic violence, R.C. 2919.25(A), of father involving his 11 year-old daughter met the sufficiency and weight of evidence standards where there was testimony that defendant struck his child across the kneecap in a fit of rage that appeared disproportionate to the child's offense of refusing to return home from a neighbor's house, with defendant using a fairly substantial stick measuring three and one-half to four feet long and one and one-half to two inches thick, and defendant supported his actions merely by explaining that he struck his child for what amounts to a minor offense because he was raised on corporal punishment, and the temporary redness on the child's knee area was sufficient to constitute physical harm under the statute.

Indictment/Sufficiency. State v. Nelson | 2023-Ohio-3566 | 4th Appellate District | 09/28/2023 In a conviction of, inter alia, aggravated murder, murder and conspiracy to commit murder, the indictment charging defendant with conspiracy to commit aggravated murder or murder was fatally defective because it failed to allege a specific, substantial act in furtherance of a conspiracy as required by R.C. 2923.01(B); also discussed, imposition of a life sentence without parole on a 20 year-old is not

cruel and unusual punishment since his sentence is not disproportionate to the crime, nor does it shock the community's sense of justice.

Search/Fruit of the poisonous tree. State v. Smith | 2023-Ohio-3587 | 7th Appellate District | 09/28/2023 In a conviction of drug-related offenses that occurred after defendant's arrest when drugs were found in his possession after he was transported to the county jail, the trial court's denial of motion to suppress was error since officer conceded that defendant never expressly invited him inside his hotel room that defendant was sharing with another person and the other person also did not invite the officer into the room, the officer's conduct in searching the room was not pursuant to the occupants' consent, the drugs officer found in the room were not in plain view, and all other evidence of drugs were excluded pursuant to the fruit of the poison tree doctrine; the trial court judgment is reversed and remanded to allow the state to determine if sufficient evidence remains to try the case without the use of any evidence gathered after the officer entered the hotel room occupied by defendant without permission.

Evidence/Hearsay/Adoptive admission/Joinder. State v. Hubbard | 2023-Ohio-3468 | 8th Appellate District | 09/28/2023 In a conviction of felonious assault that resulted in the victim's death, the trial court did not err by allowing a witness to testify about statements made by defendant in the witness' presence since it was admissible as an adoptive admission and, as a result, defendant also failed to demonstrate plain error by the joinder of his trial with the trial of the other defendants.

Search/Suppression/Non-consensual encounter. State v. Ivery | 2023-Ohio-3495 | 10th Appellate District | 09/28/2023 In a prosecution of defendant for carrying a concealed weapon and having weapons while under disability, the trial court's grant of defendant's motion to suppress was not error since officer did not have probable cause to arrest defendant or a reasonable, articulable suspicion to stop him under Terry since the stop was not consensual when defendant walked away from officer after defendant tried to disengage from the officer numerous times and told the officer he was going home, but the officer continued pursuing and attempting to engage defendant without having a reasonable suspicion that defendant was engaging in criminal activity; also discussed, good-faith exception.

Attorney-Client/Appointed counsel fees/Serious mental illness. State v. Ahmed | 2023-Ohio-3464 | 7th Appellate District | 09/27/2023 In an appeal of the trial court's denial of appointed counsel's motion for fees incurred in pursuing a serious mental illness post-conviction petition in defendant's capital case, the trial court erred where, although it granted counsel's motion to be appointed counsel, it later denied all fees because counsel did not secure defendant's consent before filing the petition, and the court of appeals holds that defense counsel was entitled to receive fees due to her appointment, and it was unreasonable for the trial court to find her fees could be wholly eliminated after her appointment under the circumstances of this case, R.C. 2953.021(J)(1), and Prof.Cond.R. 1.14(a), (b); remanded with instructions to grant the fee application to the extent warranted by law.

Speedy trial/Minor misdemeanor. State v. Myers | 2023-Ohio-3413 | 4th Appellate District | 09/22/2023 In a conviction of minor misdemeanor failure to maintain an assured clear distance ahead, the trial court erred by denying defendant's motion to dismiss for violation of the Speedy Trial Act, R.C. 2945.71, et seq., even if defendant had orally requested a continuance of the matter for purposes of holding a pretrial hearing, because there was no written motion filed, the granting of a continuance violated Traf.R. 18, nothing in the record indicates that defendant requested a pretrial hearing or that he requested a continuance and Traf.R. 18 requires that in traffic cases "[c]ontinuances shall be granted only upon a written motion that states the grounds for the requested continuance," and there was no explicit waiver of defendant's speedy trial rights; remanded to the trial court for discharge, R.C. 2945.73.

Disorderly misconduct/Sufficiency and weight. State v. Bradfield | 2023-Ohio-3389 | 2nd Appellate District | 09/22/2023 Conviction of disorderly misconduct, R.C. 2917.11(B)(2), did not meet the sufficiency and weight of evidence standards since the evidence admitted did not provide an affirmative showing of dangerousness where the sole fact that an individual is intoxicated does not give rise to a[n] * * * infraction," McCurdy.

Right to remain silent/Waiver. State v. Dorff | 2023-Ohio-3424 | 7th Appellate District | 09/21/2023 In a conviction of aggravated possession of drugs, R.C. 2925.11(A), the trial court did not commit plain error by not finding that the prosecutor violated defendant's Fifth Amendment right to remain silent by repeatedly commenting on defendant's decision to remain silent since defense counsel on direct examination asked defendant about the officers' lack of questioning of him about the drugs found and why he did not volunteer his explanation to them in an apparent attempt to bolster his testimony, and thus the defense opened the door for the state to counter with evidence and arguments about defendant's silence.

Sentencing/Firearm specification/Mandatory prison sentence/Community control. State v. Logan | 2023-Ohio-3353 | 8th Appellate District | 09/21/2023 In an en banc request consideration to resolve an intra-district conflict of whether R.C. 2929.13(F)(8) requires a mandatory prison term, precluding community control, on an underlying felony where a defendant pleads guilty to a corresponding firearm specification, the court of appeals holds that in a conviction by plea to attempted having weapons while under disability, a fourth-degree felony, including a one-year firearm specification that defendant also pled guilty to, the trial court did not err by sentencing defendant to a mandatory prison term of one year, attributed to the firearm specification, to be followed by a two-year term of community control for the underlying felony, rejecting the state's claim on appeal that the trial court was required to impose a mandatory prison term on both the underlying felony and the specification.

Search/Suppression. State v. Parrish | 2023-Ohio-3356 | 8th Appellate District | 09/21/2023 In an appeal by the state of the trial court's grant of a motion to suppress in a prosecution of having weapons while under disability and carrying concealed weapons, the trial court did not err in suppressing weapons seized in violation of the Fourth Amendment since, even though officer's testimony of her observations leading to defendant's detainment established reasonable articulable suspicion for an investigatory stop for gambling, no testimony was presented that defendant had any evidence of gambling on his person or weapons on him when he was detained, and no testimony was presented as to how guns found along defendant's path were observed,

secured or linked directly to him and those weapons are subject to exclusion under the fruit of the poisonous tree doctrine.

New trial/Recantation. State v. Thompson | 2023-Ohio-3358 | 8th Appellate District | 09/21/2023 Following a 2001 conviction of three counts of rape, R.C. 2907.02, of defendant's seven year-old son that was affirmed and a 2002 denial of a petition for post-conviction relief that was affirmed, the trial court's denial of 2022 amended motion for leave to file a delayed motion for a new trial was error where the alleged victim was 29 years-old at the time of the hearing on the motion and even viewing the recantation with extreme suspicion, the court of appeals finds this to be the exceptional case in which the witness' recantation warrants reversal because it was unreasonable for the trial court to conclude the recantation was not credible where the witness provided a complete and unambiguous recantation of his trial testimony.

Plea/Withdrawal/Jurisdiction. State v. Enyart | 2023-Ohio-3373 | 10th Appellate District | 09/21/2023 Following a 2007 conviction in two cases by plea to sexually-oriented felony offenses involving multiple minors that was affirmed, and the trial court's denial of 2017 Crim.R. 32.1 motion to withdraw plea that was affirmed based on lack of jurisdiction pursuant to Special Prosecutors, the trial court's denial of appellant's 2022 motion to withdraw plea was error since the court of appeals' reliance on Special Prosecutors for its prior decisions denying appellant's attempts to withdraw his plea no longer applies to post-sentence motions to withdraw a guilty or no contest plea filed pursuant to Crim.R. 32.1 as a result of the Ohio Supreme Court's holding in Janas, and thus the trial court did have jurisdiction to consider the merits of appellant's motion to withdraw his plea; remanded for further proceedings.

Restitution/Fair market value. State v. Moore | 2023-Ohio-3318 | 1st Appellate District | 09/20/2023 In a conviction by plea to criminal damaging arising out of defendant's car rear-ending another car, the trial court erred in awarding a restitution amount that was based on the cost of a replacement vehicle since the restitution amount should have been limited to the fair market value of the vehicle "immediately prior to the accident," and the record contains no competent and credible evidence to establish the market value of defendant's vehicle prior to the accident.

Ineffective assistance/Fair trial/Prior bad acts/Cumulative effect. State v. Bruce | 2023-Ohio-3298 | 3rd Appellate District | 09/18/2023 In a conviction of, inter alia, three counts of rape of a minor, defense counsel provided ineffective assistance by failing to object to introduction of inadmissible exhibits or testimony about 30 occasions identified in defendant's brief of unfairly prejudicial testimony given at trial of defendant's prior acts that should not have been introduced unchallenged, as well as the introduction of unredacted interviews by officers that contain more prejudicial versions of the same information in addition to other prejudicial opinion evidence and other prior bad acts evidence that also should not have been admitted into evidence as unchallenged exhibits, and the cumulative effect of these errors was to deny defendant his right to a fair trial, Evid.R. 404(B), Powell.

Sentencing/Jail-time credit. State v. Stewart | 2023-Ohio-3279 | 2nd Appellate District | 09/15/2023 In a conviction by plea to disrupting public service, R.C. 2909.04(A)(1), and of endangering children, R.C. 2919.22(A), the state concedes that the trial court failed to notify defendant at the time of sentencing of the total number of days of jail-time credit that he was entitled to, R.C. 2929.19(B)(2)(g)(i) and Ohio Adm.Code 5120-2-04; also discussed, the trial court considered the statutory sentencing criteria in R.C. 2929.11 and 2929.12, the sentence is within the authorized statutory range and a trial court is not required to make any findings or give its reasons for imposing a maximum or more than minimum sentence.

Search/Motion to suppress/Automobile exception. State v. O'Neal | 2023-Ohio-3268 | 1st Appellate District | 09/15/2023 In a prosecution for the unlawful possession of a firearm and two drug offenses, the trial court's grant of motion to suppress was error since officer had a reasonable suspicion to detain and investigate defendant, who was a passenger in a vehicle, where officer observed a handgun in defendant's waistband when entering the vehicle and officer was justified in believing that the individual may be armed and presently dangerous, and thus officer was permitted to conduct a limited protective search for concealed weapons during the traffic stop, as well as a search of the car when no weapon was found on defendant, under the automobile exception to a search warrant based on the officer's observation of defendant entering the vehicle with a weapon and no weapon was found on him when the vehicle was stopped and defendant searched.

Self-defense/Jury instruction. State v. Irvin | 2023-Ohio-3274 | 2nd Appellate District | 09/15/2023 On remand from the Ohio Supreme Court for the court of appeals to conduct a harmless-error analysis to determine whether the trial court's misallocation of the self-defense burden of proof requires reversal of defendant's convictions for murder and felonious assault, the court of appeals holds that defendant was entitled to a self-defense jury instruction, Brooks, where defendant testified the other person smelled of alcohol, was acting irrationally by displaying unprovoked aggression and had struck him in the head with a rifle that he continued to hold, and thus was sufficient evidence for a trier of fact to conclude that defendant's use of deadly force was necessary to protect himself and, under the circumstances, defendant had no duty to retreat; also, the trial court's erroneous allocation of the burden of proof on self-defense was not harmless error; remanded for new trial.

Sealing/Rehabilitation. State v. G.H. | 2023-Ohio-3269 | 1st Appellate District | 09/15/2023 Denial of applications to seal records of a 2016 conviction for misdemeanor assault, R.C. 2903.13, and a 2017 misdemeanor conviction for violation of a protection order, R.C. 2919.27, was error since the trial court's reasoning for determining that there was an insufficient demonstration of rehabilitation because of the nature of the offenses was an abuse of discretion since this reasoning runs counter to the legislature's determination that certain types of offenses and a certain number of offenses are eligible to be sealed, and "the nature of the offense cannot provide the sole basis to deny an application to seal records," R.S., including certain offenses of violence, and the state and city presented no argument as to what governmental interest is served by denying the applications.

Sentencing/Mandatory term of imprisonment/Post-release control. State v. Sheppeard | 2023-Ohio-3278 | 2nd Appellate District | 09/15/2023 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a), the trial court erred by

failing to impose a mandatory term of imprisonment of 60 days, and the court also failed to properly impose post-release control at sentencing and incorrectly stated in its judgment entry that post-release control could be increased to a maximum term of eight years; remanded for the proper imposition of post-release control and imposition of the required mandatory prison term.

Evidence/Confrontation Clause. State v. Stevens | 2023-Ohio-3280 | 4th Appellate District | 09/14/2023 In a conviction of, inter alia, aggravated burglary, R.C. 2911.11(A)(1), although defendant's constitutional right to confront evidence against him was violated by the trial court allowing a Call Detail Record to be introduced into evidence by the state during the testimony of an officer since the trial record contains no certification or affidavit authenticating the record as a business record, and no cellular service provider representatives for defendant's or another participant's in the crime were subpoenaed to testify at trial, the error did not affect defendant's substantial rights in view of the other evidence presented of a recorded statement by defendant and another participant in the crimes, who was a state witness, which demonstrated that defendant was a participant in the crimes, West and McAlpin; also discussed, pre-indictment delay and other acts evidence, Evid.R. 404(B).

Sentencing/Failure to comply/Plain error. State v. McCollins | 2023-Ohio-3248 | 8th Appellate District | 09/14/2023 In an appeal by the state of the concurrent prison sentence imposed for a conviction of, inter alia, failure to comply, R.C. 2921.331(B), the trial court committed plain error in sentencing defendant to a 12-month prison term for a misdemeanor offense since the state at the plea hearing amended the charge of failure to comply from a felony offense to a misdemeanor offense and defendant pled guilty to the amended offense, and the trial court's ability to sentence defendant was limited to a term of 180 days in jail; judgment is reversed in part and cause is remanded to re-sentence for a misdemeanor offense.

Sentencing/Suspension/Record for review. State v. Zappa | 2023-Ohio-3197 | 9th Appellate District | 09/11/2023 In a conviction of two counts of public indecency, R.C. 2907.09(A)(1) and (A)(2), by a patron of a spa massage, the trial court erred in failing to suspend defendant's 45-day jail term in its judgment entry since it does not reflect the trial court's stated intention to suspend the jail-time as discussed on the record, and defendant's claim that the trial court erred in sentencing him to 45 days in jail that was suspended is without merit since defendant failed to include the pre-sentence investigation report as required by R.C. 2953.08(F) as part of the record for review.

Evidence/Other Acts/Evid.R. 404(B). State v. Handshoe | 2023-Ohio-3205 | 3rd Appellate District | 09/11/2023 In a conviction of burglary, R.C. 2911.12(A)(3), the trial court's admission into evidence of testimony by a person who lived with defendant about defendant's involvement with her in the burglary was not impermissible other acts evidence under Evid.R. 404(B) since the Rule is not implicated in this case because the challenged testimony related directly to actions of defendant that were intrinsic to the crime charged in the indictment and served to establish the manner in which defendant was complicit in the crime, R.C. 2923.03(A)(2); also discussed, duplicate recordings, Evid.R. 1002 and 1003.

Sealing/Rehabilitation. State v. T.C.N. | 2023-Ohio-3156 | 8th Appellate District | 09/07/2023 Denial of application to seal record was error where applicant was a police officer when she was convicted by plea to theft from a department store of goods in the amount of $80.25, surrendered her peace officer certification per her plea and completed her sentence of community control, applicant demonstrated rehabilitation by her enrollment in school, efforts in securing employment and no further criminal activity, and her motion to withdraw her guilty plea after she had completed her sentence of community control is insufficient to counter her evidence of rehabilitation in attending nursing school to provide for her two young children.

Evidence/Judicial notice of prior proceedings. State v. Boychi | 2023-Ohio-3134 | 9th Appellate District | 09/06/2023 In a conviction of five counts of failure to confine dogs, R.C. 955.22(C)(1), the trial court erred by taking judicial notice of prior proceedings in a different case to establish that the prior convictions were for violations of R.C. 955.22(C)(1) and that defendant was the defendant in the prior proceedings since those proceedings were matters outside the record in this case, and thus not subject to the court of appeals review, R.C. 2945.75(B)(1), and the fact that the prior judgment entries were for a loose dog violation under R.C. 955.22(C) does not fall within the judicial notice provision in Evid.R. 201(B)(1) or (2); also discussed, double jeopardy.

Anders brief. State v. Mills | 2023-Ohio-3117 | 11th Appellate District | 09/05/2023 In a conviction of, inter alia, three counts of felonious assault, R.C. 2903.11(A)(2), and appellant's counsel's motion to withdraw as counsel pursuant to Anders, the court of appeals affirms judgment after conducting an independent review of the record and finding no arguable issues necessitating the appointment of new counsel and that the appeal is wholly frivolous.

Sentencing/Jail-time credit. State v. Dorazio | 2023-Ohio-3126 | 11th Appellate District | 09/05/2023 Denial of jail-time credit was error since " '[w]here a later sentencing court makes its sentence concurrent with an earlier sentence, a defendant is entitled to jail-time credit in both cases for any time that he was held in pre-trial confinement on both cases simultaneously,' " Steinmetz, and appellant was not given an opportunity to post bond in this case until after the trial court in another county had sentenced him on separate charges.

Sentencing/Community control. State v. Fountain | 2023-Ohio-3111 | 3rd Appellate District | 09/05/2023 After a 2019 conviction by plea to counterfeiting, R.C. 2913.30(B)(2), (C), and imposition to two years community control including defendant pay restitution to the municipal court, pay a supervision fee and pay court costs within one year, defendant pled guilty in 2020 to tampering with evidence, R.C. 2921.12(A)(2), (B), and imposition to three years of community control, with the state requesting community control in the 2019 case be revoked and, on the state's motion in 2022, the trial court's extension of community control in the first case until October 29, 2024 and continued community in the second case until April 6, 2025 was error since defendant was not provided with a hearing, Crim.R. 32.3, and she did not waive the minimum due process requirements when the trial court extended her community control.

Sealing/Eligibility. State v. VanWey | 2023-Ohio-3116 | 5th Appellate District | 09/05/2023 Trial court's grant of application to seal record of convictions of assault, R.C. 2903.13(A), was error since applicant was also convicted in

the same case of OVI, R.C. 4511.19(A)(1)(a), that was not eligible to be sealed and, since the assault conviction is part of the same case, the applicant is not an eligible offender and the case records cannot be sealed, R.C. 2953.32 and 2953.36 (A)(2), Pariag.

Post-conviction relief/Hearing. State v. Lucien | 2023-Ohio-3128 | 11th Appellate District | 09/05/2023 Following a conviction of burglary and abduction, the trial court's dismissal of a petition for post-conviction relief without a hearing was error since "[i]f the trial court dismisses a petition on the basis that it fails to allege substantive grounds for relief, the court must include findings of fact and conclusions of law explaining the reasons for that decision," Blanton, and before deciding whether petitioner is entitled to a hearing on his petition, the court must "determine whether there are substantive grounds for relief," R.C. 2953.21(D), Milanovich.

Sentencing/Judicial release. State v. Kennedy | 2023-Ohio-3078 | 10th Appellate District | 08/31/2023 In an appeal by the state of the trial court's grant of judicial release of defendant following convictions by pleas in three cases involving multiple armed robberies, the state failed to demonstrate that the trial court committed reversible error since the offender was eligible for judicial release under former R.C. 2929.20(C)(5), considering the aggregated non-mandatory prison term over defendant's consecutive sentences in the three cases, and the trial court made the necessary findings under former R.C. 2929.20(J) to permit judicial release of an offender imprisoned for second-degree felonies; also, defendant is not ineligible for judicial release due to unserved mandatory time.

Restitution/Hearing. State v. Davis | 2023-Ohio-3064 | 8th Appellate District | 08/31/2023 In a conviction by plea to unauthorized use of a motor vehicle, R.C. 2913.03, the state concedes that the trial court failed to engage in a due process ascertainment of whether the amount of restitution bore a reasonable relationship to the loss since "[i]f the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount," R.C. 2929.18(A)(1).

Sex offenses/Sex offender registration/Appellate review. State v. Schilling | 2023-Ohio-3027 | Supreme Court of Ohio | 08/31/2023 Denial of defendant's motion to terminate his duty to comply with his Tier I sex offender registration requirements was error where defendant was convicted in 2008 pursuant to a plea to attempted voyeurism in an Ohio court, so defendant is eligible to have his petition to terminate his duty to register considered under R.C. 2950.15, and the trial court's erroneous imposition of sex offender registration under the Adam Walsh Act instead of Megan's Law was reviewable on appeal since the Adam Walsh Act had not been enacted on the date of the offense, and thus the sex offender registration was not barred from review by Henderson; also, Ohio's sex offender registration and reporting laws contain no provision tolling the period during which a person convicted of a sexually-oriented offense in Ohio must register and report when the person resides in another state and properly registers and reports in the other state.

Marsy's Law/Appeal/Mootness. State v. Davis | 2023-Ohio-3012 | 3rd Appellate District | 08/28/2023 In a bench trial in which defendant was found not guilty of criminal trespass, R.C. 2911.21(A), alleged victim's claim that the trial court violated her right to be present at trial pursuant to Marsy's Law, Ohio Const. Art. I, Sec. 10a(A)(2), because the trial court ordered a separation of witnesses, the court of appeals dismisses appeal as moot since, even if the court of appeals found the trial court erred by denying the alleged victim's request to be present at trial, there is no remedy that could be provided since the trial court acquitted defendant of the criminal trespass charge and, since defendant may not be tried again, there is no remedy that can be provided.

Failing to disclose personal information. State v. Frye | 2023-Ohio-2967 | 1st Appellate District | 08/25/2023 Bench conviction of failing to disclose personal information when requested by a law enforcement officer, R.C. 2921.29(A)(1), was error since defendant was not asked to disclose his name, address or date of birth, but instead, officer asked him whether he had his "ID" that did not constitute the information required by the statute since the plain language of R.C. 2921.29(A)(1) does not authorize an officer to request an identification card or driver's license; defendant is discharged from further prosecution.

Confrontation Clause/Police video/Self-defense. State v. Wilcox | 2023-Ohio-2940 | 1st Appellate District | 08/23/2023 In a conviction of, inter alia, murder, R.C. 2903.02(A) and (B), the trial court violated defendant's Confrontation Clause rights by allowing a prejudicial police video interview of a non-testifying witness at the scene of the murder to be played at trial where the statements directly undermined defendant's self-defense claim; remanded for new trial.

Disseminating matter harmful to juveniles/Freedom of speech/Community standards. State v. Sebring | 2023-Ohio-2911 | 9th Appellate District | 08/21/2023 In a conviction of, inter alia, two counts of disseminating matter harmful to juveniles, R.C. 2907.31, defendant's claim that his conviction violated his right to freedom of speech under the First Amendment is without merit since, under the statute, the "prevailing standards in the adult community as a whole with respect to what is suitable for juveniles" applies, not whether the juveniles found the messages "new, shocking, or corrupt" as defendant claims, R.C. 2907.01(E)(2), and simply because the victims were 16 years-old and could legally consent to the sexual conduct contained in the messages he sent to them is insufficient to meet defendant's burden that the statute is unconstitutional.

Post-conviction relief/Evidence outside the record. State v. Wright | 2023-Ohio-2895 | 2nd Appellate District | 08/18/2023 Following a conviction of three counts of rape that was affirmed on appeal, the trial court's dismissal of a petition for post-conviction relief without a hearing was error in part where the petition raised issues of ineffective assistance of counsel and the claims depended on factual allegations that cannot be decided by examining the trial record; the trial court also erred in rejecting various claims because the same issues had been raised on direct appeal if matters outside the record are presented in the petition on the issues; and the trial court erred in categorically stating that failure to call an expert and reliance instead on cross-examination did not constitute ineffective assistance of counsel.

Criminal damaging/Sufficiency and weight. State v. Guterba | 2023-Ohio-2899 | 7th Appellate District | 08/18/2023 Conviction of criminal damaging, R.C. 2909.06, of an electrical box on a light pole on property owned by a trust was against the sufficiency and weight of

evidence standards since the defendant is a trustee of the trust, the pole and junction box were permanent fixtures and the parties stipulated that the trust "would have never pressed any charges" against defendant, and defendant, as a legal owner of the property, could not criminally damage his own property.

Witnesses/Notes/Evid.R. 612. State v. Henning | 2023-Ohio-2905 | 6th Appellate District | 08/18/2023 In a conviction of, inter alia, involuntary manslaughter, R.C. 2903.04(A) and (D), where the decedent died from a drug overdose from fentanyl that was purchased by defendant and injected into the victim by defendant, the trial court did not err in granting the state's motion to permit a prosecution witness to use her notes to refresh her memory where the notes had been disclosed to defendant and reviewed by him prior to the witness' testimony, Evid.R. 612, since defendant did not move to have any of the witness' notes formally admitted into evidence, and witness was subject to cross-examination concerning her recollection of the interactions with defendant and the accuracy of her "documentation;" also discussed, Confrontation Clause and hearsay.

Contempt/Civil vs. Criminal. Miami Twp. Bd. of Trustees v. Powlette | 2023-Ohio-2890 | 2nd Appellate District | 08/18/2023 Trial court's imposition of a $50,000 sanction against defendant for his failure to cease using property contrary to its zoning status was criminal rather than civil in nature since it was imposed for not taking the trial court seriously by continuing to directly violate the court's order not to use property other than the way it is zoned, but the court erred by applying the "clear and convincing" standard of proof for civil contempt, but imposing a criminal contempt sanction; on remand, the trial court is free to decide whether it wants the contempt sanction to be civil or criminal in nature, but it must apply the proper standard of proof for the chosen sanction.

Speedy trial/Pro se motion to dismiss. State v. Givens | 2023-Ohio-2898 | 7th Appellate District | 08/18/2023 In a conviction of fourth-degree misdemeanor criminal trespass, R.C. 2911.21(A)(1), defendant was denied his speedy trial right, R.C. 2945.71, et seq., where the trial was rescheduled due to the appointment and replacement of numerous counsel, but defendant had been and was unrepresented, and the trial court treated him as acting pro se when defendant filed his pro se letter to the trial judge that the court of appeals treated as a motion to dismiss that preserved defendant's right to appeal the alleged speedy-trial violation.

Trial/Trial proceedings/Recording/Due process. State v. Wheeler | 2023-Ohio-2884 | 1st Appellate District | 08/18/2023 In a bench conviction of two counts of aggravated menacing, defendant's due process rights were violated by the trial court's failure to provide an adequate recording of the trial proceedings pursuant to Crim.R. 22, resulting in an incomplete record for purposes of appeal, the trial court certified that the record remained incomplete and could not be completed, and the state conceded the record was incomplete and could not be rectified by App.R. 9; remanded for new trial.

Sentencing/Sex offender registration/ Nunc pro tunc entry. State v. Williams | 2023-Ohio-2886 | 1st Appellate District | 08/18/2023 In a conviction of five counts of pandering sexually-oriented matter, in which the trial judge informed defendant of his duty to register as a Tier II sex offender and had him sign a registration notification form, but the judge failed to include that requirement in the judgment entry and, in the state's appeal, defendant concedes the error, and defendant agrees a remand for a nunc pro tunc entry to correct the sentencing entry is proper, Crim.R. 36.

Sentencing/Consecutive sentences/ Harmless error. State v. Pascale | 2023-Ohio-2877 | 8th Appellate District | 08/17/2023 In a conviction by plea to three counts of kidnapping, R.C. 2905.01(A)(3); seven counts of felony endangering children, R.C. 2919.22(B)(1)-(3); misdemeanor endangering children, R.C. 2919.22(B)(1); and tampering with evidence, R.C. 2921.12(A)(1), and imposition of consecutive prison sentences of 62 years to 67.5 years, the trial court erred in sentencing the misdemeanor conviction to be served consecutively with the felony sentences, R.C. 2929.41(B)(1), but the error was harmless since it did not affect the outcome of the proceedings because defendant was not sentenced to more time as a result of the trial court's sentencing error; also discussed, sentencing package doctrine and consecutive sentences.

Appeal/Sua sponte reconsideration/ Motion to withdraw plea. State v. Walton | 2023-Ohio-2879 | 8th Appellate District | 08/17/2023 On sua sponte reconsideration of decision in State v. Walton, 2023-Ohio-2307, after a conviction by plea to, inter alia, aggravated vehicular homicide and OVI in which the trial court denied a motion to suppress the results of blood alcohol tests, ruling that defendant's argument that trauma from the accident increased the blood alcohol percentage was a weight of the evidence determination for the jury and, on appeal, the judgment was affirmed, the trial court's denial, based on lack of jurisdiction of defendant's subsequent Crim.R. 32.1 motion to withdraw plea, was error since a trial court has jurisdiction to maintain and determine a motion to withdraw a guilty plea subsequent to an appeal and an affirmance, Davis and Janas; reversed and remanded for the trial court to consider the merits of the motion.

Prosecutorial misconduct/Fair trial. State v. Dukes | 2023-Ohio-2863 | 9th Appellate District | 08/16/2023 In a conviction of two counts of rape and two counts of gross sexual imposition of defendant's 10 year-old step-granddaughter, the trial court's denial of defendant's motion for a mistrial for prosecutorial misconduct in cross-examining defendant did not deprive defendant of a fair trial where prosecutor asked defendant: "You'd agree with me you don't want to go back to prison, do you, sir?" and on objection by defense counsel, the trial court stated it would give a curative instruction in the jury instructions since defendant first introduced the fact that he had been to prison when discussing his previous convictions and, given the context of the state's question within the trial, the trial court's granting defendant's objection, and the curative instruction the judge gave that defense counsel agreed to, there was no fair trial violation.

Assault/Self-defense instruction. State v. Cremeans | 2023-Ohio-2845 | 5th Appellate District | 08/15/2023 In a conviction of assault, R.C. 2903.13(A), the trial court did not err in denying defendant's motion for a self-defense instruction, although the trial court incorrectly considered credibility in making its determination to deny a self-defense instruction, it arrived at the correct conclusion since video and witness testimony and the video of the incident do not support defendant's claim that she was in fear of physical harm and was not at fault for creating

the situation giving rise to the assault where the video shows defendant striding boldly and animatedly back and forth across her property line onto her neighbor's property while simultaneously inviting conflict by taunting her neighbors.

Plea/Post-release control/Consecutive sentences. State v. Hill | 2023-Ohio-2813 | 3rd Appellate District | 08/14/2023 In a conviction by plea to failure to comply with an order or signal of a police officer, R.C. 2921.331(B), (C)(5)(a)(ii), and of tampering with evidence, R.C. 2921.12(A)(1), (B), and imposition of consecutive prison sentences totaling 48 months and to be served consecutively to a 859-day prison term imposed by the trial court for defendant's post-release control violation, plea was not validly made since the trial court's failure to inform defendant that the court could impose as part of the maximum sentence the post-release control sentence consecutively to the underlying felony offense sentence pursuant to R.C. 2929.141(A) violated Crim.R. 11(C)(2)(a), Bishop.

Speedy trial/Tolling/Multiple indictments. State v. Otero | 2023-Ohio-2807 | 9th Appellate District | 08/14/2023 In a prosecution for drug offenses, the trial court erred in dismissing a second indictment by erroneously concluding any "tolling questions applicable in the first case * * * do not apply to [defendant's] [second] case[,]" and in failing to perform a tolling analysis for appellate review since tolling events from defendant's first indictment also apply to his second indictment “because the charges in both criminal cases are based on the same underlying facts and circumstances," Blackburn and Crim.R. 48(B).

Sentencing/Community control. State v. Campbell | 2023-Ohio-2815 | 12th Appellate District | 08/14/2023 Following a 2019 conviction by plea to burglary, imposition and violations of community control, the trial court committed plain error in the admission of the discharge summary of a residential community since, when questioned by the trial court whether defendant was admitting to the factual basis of the alleged violation, she unequivocally denied admitting to the allegation, the state did not introduce evidence substantiating the violation, and the trial court's sua sponte producing a discharge summary containing written allegations of the alleged violation constituted a denial of defendant's due process right of confrontation and cross-examination.

Jury/Instructions/Assault/Lesser-included offense. State v. Liming | 2023-Ohio-2817 | 12th Appellate District | 08/14/2023 In a conviction of fourth-degree felony assault on a peace officer, R.C. 2903.13(B), (C)(6), and third-degree felony tampering with evidence, R.C. 2921.12(A)(1), arising out of a sting operation to apprehend unlicensed deer hunters illegally hunting on private properties in which officer, while engaging in the sting, was shot by defendant who was trespassing and using a thermal optics scope with his rifle in the area where a decoy deer had just been placed, the trial court did not err by not instructing the jury on negligent assault, R.C. 2903.14(A), as a lesser-included offense of assault, R.C. 2903.13(B), since negligent assault is not a lesser-included offense of assault.

Trafficking drugs in vicinity of child/ Sentencing/Community control. State v. Dunn | 2023-Ohio-2828 | 11th Appellate District | 08/14/2023 In a conviction of, inter alia, aggravated trafficking in drugs, R.C. 2925.03(A)(1), (C)(1)(a), and trafficking in the vicinity of a child, R.C. 2925.03(A)(2), (C)(1)(b), the state did not provide sufficient evidence that defendant prepared to distribute a controlled substance for sale within 100 feet of a juvenile; also, the trial court properly did not consider sentencing defendant to community control because a pre-sentence investigation had not been provided, and the trial court did not err in granting the state's motion in limine to prevent the defense from introducing evidence of uncover agent's prior convictions, Evid.R. 404(B)(1).

Witnesses/Expert/Evid.R. 403 and 702. State v. Huebner | 2023-Ohio-2803 | 6th Appellate District | 08/11/2023 In a conviction of two counts of rape, R.C. 2907.02(A)(1)(b) and (B), of defendant's two minor daughter's, the trial court erred by excluding defendant's expert witness testimony under Crim.R. 403(A) since the evidence was relevant and admissible where the prosecution witnesses relied on interviews of the children in giving testimony because " '[h]ow that information was obtained and the accepted protocols on how to obtain such information certainly are relevant,' " Gersin, and the expert standard does not require definitive opinion for admissibility and can be presented in terms of possibilities, Evid.R. 702 and Thompson.

Sentencing/Community control. State v. Bukovec | 2023-Ohio-2774 | 8th Appellate District | 08/10/2023 Following a conviction of misdemeanor assault and aggravated menacing and imposition of three years of community control, the trial court erred by continuing community control after imposing the maximum six-month jail term for a prior failure to report.

Jury trial/Waiver/Tampering with records. State v. Solt | 2023-Ohio-2779 | 10th Appellate District | 08/10/2023 In a bench conviction of tampering with records, the trial court erred by failing to obtain a signed written waiver of a jury trial from defendant, R.C. 2945.05, Pless; however, since the result may prevent a re-trial because "[a]n assignment of error challenging the sufficiency of the evidence is potentially dispositive of a defendant's conviction and may not be rendered moot by a remand on any other assignment of error," Gideon, the court of appeals finds that the evidence was sufficient to support the conviction for tampering with records.

Search/Traffic stop/Reasonable suspicion. State v. Robertson | 2023-Ohio-2746 | 10th Appellate District | 08/08/2023 In a conviction by plea to having weapons under disability, R.C. 2923.13, trial court's denial of a motion to suppress was error since officer did not have a reasonable suspicion to make a traffic stop of defendant for an expired license plate since Am.Sub.H.B. No. 197 unambiguously temporarily suspended the expiration of vehicle registrations, the officer had no knowledge of H.B. 197, and he failed to cite any provision of the uncodified law that supported his interpretation, and thus since the officer's mistake of law was objectively unreasonable, the traffic stop constituted a violation of defendant's rights.

Search/Traffic stop/Reasonable suspicion. State v. Robertson | 2023-Ohio-2746 | 10th Appellate District | 08/08/2023 In a conviction by plea to having weapons under disability, R.C. 2923.13, the trial court's denial of a motion to suppress was error since officer did not have a reasonable suspicion to make a traffic stop of defendant for an expired license plate since Am.Sub.H.B. No. 197 unambiguously temporarily suspended the expiration of vehicle registrations, the officer had no knowledge of H.B. 197, and he failed to cite any provision of the uncodified law that supported his interpretation and, since the officer's mistake of law was objectively

unreasonable, the traffic stop constituted a violation of defendant's rights.

Plea/Voluntariness. State v. Pummell | 2023-Ohio-2721 | 3rd Appellate District | 08/07/2023 In a conviction by plea to, inter alia, burglary, plea was not voluntarily made where the trial court made statements specifically informing defendant that he would receive a lower sentence if he entered a guilty plea than if he went to trial by stating "at the end of the trial, if you were to be found guilty, you could count on the penalties being more severe than what I've told you."

Sentencing/Allied offenses. State v. Maloney | 2023-Ohio-2711 | 12th Appellate District | 08/07/2023 In a conviction of aggravated burglary and two counts of felonious assault, the trial court erred by failing to merge as allied offenses of similar import for sentencing the aggravated burglary conviction with the two felonious assault convictions since the offenses were not dissimilar in import or significance since the harm that resulted was the same and the felonious assault was the very reason for defendant's aggravated burglary, and there was no separate animus since defendant acted with a single criminal motive, namely to enter the victims' home for the purpose of inflicting physical harm on the victims.

Self-representation/Sentencing/Life imprisonment without parole. State v. Graham | 2023-Ohio-2728 | 11th Appellate District | 08/07/2023 Following the Ohio Supreme Court's vacation of death sentence in an aggravated murder conviction, the trial court's imposition of, inter alia, life imprisonment without parole, the trial court did not err by denying defendant's request to represent himself where the trial court reasonably believed defendant's true motive was to advance frivolous and irrelevant "sovereign citizen" arguments, and the court's Faretta inquiries were legally sufficient; also, the trial court did not err in holding that the Eighth Amendment does not prohibit a discretionary prison sentence of life without the possibility of parole for offenders who were 21 years-old or younger at the time of the offense, Miller.

Evidence/Confrontation Clause/ Harmless error. State v. Parker | 2023-Ohio-2722 | 3rd Appellate District | 08/07/2023 In a conviction of assault, R.C. 2903.13, in which the victim did not testify, although the trial court's admission of body camera video of the investigating officer's interaction with the victim at the hospital violated the Confrontation Clause since the primary purpose of the interaction was not part of a police investigation to meet an ongoing emergency, error was harmless since three eyewitnesses testified at trial and specifically identified defendant as the assailant.

Cruelty to a companion animal/ Kept. State v. Kyles | 2023-Ohio-2691 | 8th Appellate District | 08/03/2023 Conviction of cruelty to a companion animal, R.C. 959.131, was not supported by sufficient evidence that a cat that had sustained injuries from bleach that defendant placed on the floor of an apartment building was "kept" as used in R.C. 959.131 since the state failed to produce evidence that the cat's injuries resulted from the care or maintenance of the cat, and its mere presence in the building is insufficient to prove that the cat was kept, and the state failed to present sufficient evidence that the cat was provided care by defendant.

Involuntary manslaughter/Weight of evidence/Complicity. State v. Evans | 2023-Ohio-2688 | 8th Appellate District | 08/03/2023 In a bench conviction of, inter alia, involuntary manslaughter, the evidence presented was insufficient to support the conviction since there is no evidence that a bullet from defendant's gun killed the fetus of the person, there is no evidence that but for defendant's shots into the hood of the pregnant woman's car that her fetus would not have died, and there is no evidence that the fetus' death was the reasonably foreseeable consequence of defendant's actions; also, there was insufficient evidence that defendant was complicit with another person since the evidence that the state presented did nothing more than establish that the two were acquaintances who had minimal communication about benign topics on the day they separately attended a neighborhood event with approximately 200 other people.

New trial/Newly discovered evidence/ Reasonable diligence. State v. Walker | 2023-Ohio-2689 | 8th Appellate District | 08/03/2023 Following a 2005 conviction of, inter alia, aggravated murder, the conviction was affirmed but the sentence was reversed and remanded for re-sentencing, the trial court's denial of defendant's 2022 motion for leave to file a Crim.R. 33 motion for a new trial was error since the trial court erred in determining that defendant did not use reasonable diligence in discovering a newly discovered witness that no one else was aware of, Bethel; matter is remanded for a hearing on the motion for leave to file a motion for new trial.

Sentencing/Plea/Breach by state. State v. Brown | 2023-Ohio-2696 | 7th Appellate District | 08/03/2023 Following a conviction of theft from an elderly person, imposition and violation of community control that defendant agreed to stipulate to and the state agreed to stand mute at sentencing but the state failed to do so, instead recommending that the trial court impose the maximum sentence that the trial court relied on, constituted plain error; reversed and remanded for new sentencing hearing.

Evidence/Hearsay/Excited utterance. State v. Bennett | 2023-Ohio-2734 | 4th Appellate District | 08/02/2023 In a conviction of rape, R.C. 2907.02(A)(2), the trial court did not err in admitting hearsay testimony by the 17 year-old victim to her mother that was made on the day following the alleged rape since it was an excited utterance where the victim was still under the stress of being sexually assaulted by a person she had known since she was eight years-old, and the fact that it was in response to a question from her mother did not remove it from the hearsay exception, Felts; also discussed, ineffective assistance of counsel.

New trial/Leave to appeal. State v. Butts | 2023-Ohio-2670 | 10th Appellate District | 08/01/2023 Following a 2003 conviction of murder and involuntary manslaughter of an infant that was affirmed, and the trial court's grant of Crim.R. 33(A)(6) motion for leave to file a delayed new trial motion and the motion for a new trial, the trial court did not err by denying the state's motion for leave to appeal or when it granted defendant's motion for a new trial since the trial court's conclusion that the jury convicting defendant in 2003 did not have the benefit of the critical advances in medical knowledge that have taken place over the last two decades after defendant's trial created sufficient doubt whether a jury today would reach the same result as it did in 2003.

Education

Collective bargaining agreement/ Jurisdiction. Tipp City Edn. Assn. v. Tipp City Exempted Village School Dist. Bd. of Edn. | 2023-Ohio-4000 | 2nd Appellate District | 11/03/2023 In plaintiffs-teacher and union's action alleging that defendant-school board

Education (Continued)

violated the parties' collective bargaining agreement (CBA) when it disciplined teacher, trial court erred in granting defendant's motion to dismiss for lack of jurisdiction where plaintiffs alleged issues concerning rights found in the CBA, but did not allege unfair labor practice under R.C. 4117.11, and R.C. 4117.09(B)(1) specifically grants the right to sue for violation of a CBA in court rather than with the state employment relations board.

Discrimination/Immunity/Pleading/ Intentional torts. Carroll v. Cuyahoga Community College | 2023-Ohio-3628 | 8th Appellate District | 10/05/2023 In student's action against college, alleging, inter alia, disability discrimination in higher education, R.C. Ch. 4112, because of failure to honor his Access letter that delineates special accommodations to support his studies as a student with disabilities, trial court's denial of college's R.C. Ch. 2744 governmental immunity-based Civ.R. 12(B)(6) motion to dismiss is affirmed where student has sufficiently pleaded that an exception applies to college's blanket immunity; however, the court did err in denying the motion to dismiss regarding student's intentional tort claims since none of the exceptions to immunity in R.C. 2744.02(B) apply to intentional torts.

Elections and Campaign Finance

Redistricting/Bipartisan support/ Objections/Jurisdiction/Dissent . League of Women Voters of Ohio v. Ohio Redistricting Comm. | 2023-Ohio-4271 | Supreme Court of Ohio | 11/27/2023 In challenge to General Assembly-districting plan that was adopted by a unanimous vote of respondent-Ohio Redistricting Commission and is effective through the 2030 election cycle, Ohio Const. Art. XI, Sec. 8(B), where petitioners filed motions for leave to file objections instanter to the present plan, respondents' motions to dismiss are granted, their motions to vacate previous orders finding plans unconstitutional are denied as moot, and petitioners' motions for leave to file objections are denied since the bipartisan adoption of the present plan is a changed circumstance that makes it appropriate for the Supreme Court of Ohio to relinquish its continuing jurisdiction over the redistricting cases; the Supreme Court's jurisdiction is limited to "cases arising under" Ohio Const. Art. XI, Sec. 9(A), so the Court does not have blanket oversight authority over the commission, and the Court's jurisdiction depends on a properly filed complaint that alleges specific violations of the constitutional provisions for which a remedy is sought; there is a dissenting opinion in this case.

Mandamus/Prohibition/Hearing on protest. State ex rel. King v. Cuyahoga Cty. Bd. of Elections | 2023-Ohio-3959 | Supreme Court of Ohio | 11/01/2023 In city mayor's effort to obtain an order for the board of elections to remove a proposed city-charter amendment from the upcoming general-election ballot and to refrain from going forward with a special mayoral-recall election, mayor's petition for a writ of mandamus, asserting that his written protest filed with the board of elections was improperly dismissed without conducting a hearing, R.C. 3501.39(A)(1) or (2), is denied since there is no evidence that the board engaged in fraud or corruption and the board did not abuse its discretion in dismissing the mayor's protest because R.C. 3501.39 is inapplicable where neither the city-charter amendment issue nor the mayoral-recall issue was presented to the board through a petition described in R.C. 3501.38; mayor's alternative writ for prohibition is also denied since extraordinary relief in prohibition is not available when there is no statute or other law requiring a board of elections to conduct a quasi-judicial hearing on a protest.

Prohibition/Protest/Quasi-judicial hearing . State ex rel. King v. Cuyahoga Cty. Bd. of Elections | 2023-Ohio-3668 | Supreme Court of Ohio | 10/08/2023 In city mayor's petition for a writ of prohibition to order board of elections to remove a proposed city-charter amendment from the upcoming general-election ballot and to refrain from going forward with a special mayoral-recall election, the writ is denied under R.C. 3501.39(A)(1) or (2) since the board of elections did not conduct a quasi-judicial hearing where the mayor did not file a written challenge to either the city-charter amendment or to the recall election, and prohibition is not available when there is no statute or other law requiring a board of elections to conduct a quasi-judicial hearing on a protest.

Initiative petition/Part-petitions/Altered first page. State ex rel. Hildreth v. LaRose | 2023-Ohio-3667 | Supreme Court of Ohio | 10/08/2023 Relators' petition for a writ of mandamus seeking to compel respondents-Secretary of State and county board of elections to sustain a protest and remove an initiative-petition from upcoming general-election ballot is granted where the first step in the initiative-petition process was for the proponents to file a certified copy of the proposed ordinance with part-petitions with the city auditor; however, the first page of the part-petitions filed with the auditor were replaced and contained new language, properly construed as a new title, that was not on the part-petitions circulated for signatures, and therefore the initiative petition did not comply with R.C. 731.28, 731.31.

Referendum petition/Misleading information. State ex rel. Miller v. Union Cty. Bd. of Elections | 2023-Ohio-3664 | Supreme Court of Ohio | 10/07/2023 Petition for a writ of mandamus to compel board of elections to place referendum petition for annexation ordinance on the ballot in upcoming election is granted where there were sufficient signatures on the part-petitions, and the Secretary of State erred in excluding the referendum from the ballot on reasoning that the information presented to referendum petition signers was misleading since alleged misrepresentations in relators' advertisement and in the statements made by circulators would not invalidate the underlying referendum petition, R.C. 731.36(A); as well, the argument that aerial-photo map presented to signers was inaccurate and misleading to potential signers is without merit since, even if the circulators did violate the statute, such a violation would not be grounds for invalidating the referendum petition.

Municipal court/Electors/Residence/ Jurisdiction. State ex rel. Crenshaw v. Cuyahoga Cty. Bd. of Elections | 2023-Ohio-3377 | Supreme Court of Ohio | 09/21/2023 Relator's petition for a writ of mandamus to compel board of elections to remove every candidate for the offices of judge and clerk of municipal court from the upcoming general election ballot, arguing that under the provisions of the city charter each candidate failed to file a nominating petition signed by the requisite number of electors and that one candidate did not meet the residency requirement, is denied since R.C. 1901.07(C)(1) establishes the requirements for nominating candidates for the offices of judge and clerk of municipal court, and the city charter's signature and residency requirements do not apply to those candidates; as well, relator's related claims for declaratory judgment and injunctive relief are dismissed since the instant court lacks original jurisdiction over those claims.

Part-petitions/Signatures/Invalid. State ex rel. Robinson v. Crawford Cty. Bd. of Elections | 2023-Ohio-3378 | Supreme Court of Ohio | 09/21/2023 Candidate's petition for a writ of mandamus to order county board of elections to certify her name as a candidate for city council in upcoming general election is denied where the board invalidated one of her part-petitions in its entirety since it contained two signatures signed by the same person, and without that part-petition, candidate did not have enough signatures to qualify for the ballot; candidate's argument that other valid signatures on the part-petition should not be invalidated because she did not knowingly permit a person to write a name other than their own, R.C. 3501.38(F), is without merit since candidate presented her petition to one person for a signature and received two signatures in return.

Part-petitions/Statement of candidacy. State ex rel. Stutzman v. Tuscarawas Cty. Bd. of Elections | 2023-Ohio-3386 | 5th Appellate District | 09/21/2023 Candidate's petition for a writ of mandamus to compel board of elections to place his name on ballot for office of village mayor in upcoming election is denied since four part-petitions filed by candidate do not contain a statement of candidacy and failure to include the statement of candidacy on the part-petitions violated R.C. 3513.261, which requires strict compliance with the provision that the statement of candidacy shall be copied on each separate petition paper before the electors' signatures are placed on it.

Liquor option/Petition/Procedure. State ex rel. Lambert v. Medina Cty. Bd. of Elections | 2023-Ohio-3351 | Supreme Court of Ohio | 09/20/2023 Relator's petition for a writ of mandamus to compel the board of elections to provide him with information and a form that he says he needs in order to have his liquor-option petition considered for placement on the ballot is denied where relator's petition for obtaining a permit to serve liquor from his location on Sundays is controlled by the procedure prescribed under R.C. 4301.333, so he is not entitled to relief in mandamus based on any failure of the board of elections to follow the procedure prescribed by R.C. 4301.33, and since relator did not provide the board with the affidavit required by R.C. 4301.333(C)(1)(a) when he filed his petition for a permit to serve liquor on Sundays, his petition was invalid in its entirety under R.C. 4301.333(C)(2).

Constitutional amendment/Ballot language/Mandamus/Dissent. State ex rel. Ohioans United for Reproductive Rights v. Ohio Ballot Bd. | 2023-Ohio-3325 | Supreme Court of Ohio | 09/19/2023 Regarding a constitutional amendment proposed by initiative petition where relators filed a petition for a writ of mandamus to compel the secretary of state to reconvene the Ohio Ballot Board to either adopt the full text of the proposed amendment as the ballot language or prescribe lawful ballot language, a limited writ is granted to reconvene the ballot board to adopt ballot language that accurately describes that the proposed amendment regulates actions of "the State" since the current ballot language's use of the term "citizens of the State" in lieu of "the State" violates the constitutional standard in Ohio Const. Art. XVI, Sec. 1 requiring ballot language "to properly identify the substance of the proposal;" also, the writ is denied in response to relators' request that the ballot board be ordered to adopt the amendment's full text since there is no requirement that a ballot contain the full text of a proposed amendment, Ohio Const. Art. XVI, Sec. 1, and there are dissenting opinions in this case.

Tax levy/Resolution/Requirements. State ex rel. Ottawa Hills Local School Dist. Bd. of Edn. v. Lucas Cty. Bd. of Elections | 2023-Ohio-3286 | Supreme Court of Ohio | 09/15/2023 School board's petition for a writ of mandamus to compel board of elections to place a tax levy on upcoming general-election ballot is denied since the board of education did not strictly comply with its statutory obligations under R.C. 5705.03(B) where the board of education's original resolution to proceed did not contain the actual amount certified by the auditor as the estimated tax rate for the levy, and the board of education did not certify a corrected resolution to proceed to the board of elections until after the certification deadline, R.C. 3501.02(F).

Initiative petition/Constitutional amendment/Statutes affected. Giroux v. Commt. Representing the Petitioners with Respect to the Initiative Program Proposing an Amendment to the Ohio Constitution Entitled the Right to Reproductive Freedom with Protections for Health and Safety | 2023-Ohio-2786 | Supreme Court of Ohio | 08/11/2023 Challenge, under Ohio Const. Art. II, Sec. 1g, to initiative petition to place a proposed constitutional amendment on the ballot in upcoming election is denied where relators-challengers' argument that the petition does not comply with R.C. 3519.01(A) because the petition does not include the text of existing statutes that would be amended or repealed by implication if the proposed constitutional amendment is adopted is without merit since the requirement to include affected existing statutes applies to initiative petitions proposing a law, rather than to initiative petitions proposing a constitutional amendment; also, relators' motion for leave to file rebuttal evidence within the time permitted for filing a reply brief, S.Ct. Prac.R. 12.06(B), is granted where the motion was timely filed and the evidence relators seek to file is relevant to their response to one of the respondent's arguments.

Referendum petition/Placement on ballot. State ex rel. LaChapelle v. Harkey | 2023-Ohio-2723 | Supreme Court of Ohio | 08/07/2023 In relator's mandamus action seeking to compel respondent-city finance director to transmit to the county board of elections a referendum petition of an ordinance, relating to requirements for nonowner-occupied residential property, for placement on ballot in upcoming election, a peremptory writ is granted since the filing of the petition with respondent within 30 days after the passage of the ordinance triggered respondent's duty to transmit the petition and a certified copy of the ordinance to the board of elections, R.C. 731.29, and respondent's denial of relator's assertion that the copy of the ordinance relator filed prior to circulating the petition was a properly certified copy is without merit since respondent's duty to certify the sufficiency and validity of the petition does not arise until after the board of elections examines the petition, so respondent may not refuse to transmit the referendum petition to the board of elections on that basis; as well, respondent does not have discretion to withhold the referendum petition by making a determination that the ordinance is administrative in nature and thus not subject to referendum.

Environmental and Natural Resources

Solar powered facilities/Environmental compatibility. In re Application of Alamo Solar I, L.L.C. | 2023-Ohio-3778 | Supreme Court of Ohio | 10/18/2023 Power Siting Board's approval of two applications for certificates of environmental compatibility and public need to build solar powered electric-generation facilities, after approving

Environmental and Natural Resources (Continued)

amended stipulations and subject to certain conditions, is affirmed where, inter alia, there is substantial evidence supporting the board's conclusion that sound emissions from the facility should not have any negative impact in the surrounding community, the R.C. 4906.10(A)(3) requirement for the board to certify that a facility represents the minimum adverse environmental impact does not require the elimination of all adverse impacts, R.C. 4906.10(A) empowers the board to grant a siting certificate "upon such terms, condition, or modifications of the construction, operation, or maintenance" of the facility as the board deems appropriate, and the board has the authority to impose conditions that are subject to monitoring for compliance by board staff.

Mineral interests/Reservation/Specific language. Faith Ranch & Farms Fund, Inc. v. PNC Bank, Natl. Assn. | 2023-Ohio-3608 | 7th Appellate District | 10/03/2023 In plaintiff-property owner's action against defendants-grantor's heirs seeking a declaration that it was the owner of oil and gas rights underlying the properties, summary judgment in favor of plaintiff is affirmed where the reservation language in the deed from grantor unambiguously reserved the rights to coal but did not express an intention to reserve oil and gas rights, plaintiff provided evidence that grantor previously used specific language in deed reservations showing intent to reserve rights, and the lack of specific language regarding oil and gas rights shows that grantor did not intend to reserve those rights.

Royalty assignment/Judgment on pleadings. Moore Family Trust v. Jeffers | 2023-Ohio-3653 | 7th Appellate District | 09/28/2023 In plaintiff's action seeking, inter alia, a declaration that mineral rights royalty assignment had expired, trial court's order granting judgment on the pleadings to defendants, instead of first issuing a default judgment against non-answering defendants, is affirmed since trial court may deny default judgment, or simply refuse to grant default judgment, when the complaint does not raise a justiciable claim, Scarpelli, using Civ.R. 12(B)(6) analysis.

Mineral interests/Root of title. Miller v. Rice Drilling D L.L.C. | 2023-Ohio-3588 | 7th Appellate District | 09/28/2023 In plaintiffs-property owners' action against defendants-energy companies and heirs of original owner seeking to quiet title to oil and gas interest underlying property, summary judgment in favor of defendants was not error where the Marketable Title Act did not extinguish defendants' interests under R.C. 5301.48 because the deed presented as proper root of title created less of an interest than plaintiffs' claimed interest, and the deed cannot be relied on to show that plaintiffs had an unbroken chain of title of record to claimed oil and gas interests.

Mineral interests/Deed/Root of title. Kocher v. Ascent Resources-Utica, L.L.C. | 2023-Ohio-3592 | 7th Appellate District | 09/28/2023 In plaintiffs-alleged heirs' action seeking title to mineral rights and a declaration that defendants failed to comply with Dormant Mineral Act, summary judgment in favor of defendants was error where the deed submitted by defendants as the root of title did not satisfy the substantive element under R.C. 5301.48 because it purported to create less of an interest than the interest claimed by defendants; the root of title consists of two distinct components, a substantive requirement and a temporal one, and the deed satisfied the temporal component but not the substantive component.

Mineral interests/Exception/Words of inheritance. Goble v. CNX Gas Co., L.L.C. | 2023-Ohio-3603 | 7th Appellate District | 09/28/2023 Dismissal of surface owners' action seeking a declaration that they owned one-half interest in oil and gas rights, claimed by heirs of grantor, is affirmed where, although the deed was executed prior to enactment of R.C. 5301.02, when words of inheritance were required if a reservation in a deed was to be anything other than a life estate in the grantor, the interest at issue in this case was an exception, rather than a reservation, because grantor owned the interest prior to executing the deed and excepted the interest to retain ownership, and therefore words of inheritance were not required in the deed.

Estate Planning, Trust and Probate

Trust/Breach/Limitations/Constructive knowledge. Carrick v. Deadman | 2023-Ohio-4295 | 10th Appellate District | 11/28/2023 In plaintiff-beneficiary's breach of trust action against defendant-trustee for engaging in self-dealing, summary judgment in favor of defendant was not error where evidence showed that plaintiff had constructive knowledge of trust's existence based on signed waivers and acceptance of checks, depletion of plaintiff's fund within trust gave him constructive knowledge of defendant's potential breach, and based on timing of plaintiff's constructive knowledge, claims were outside the statute of limitations, R.C. 5810.05(C).

Remove executrix/Standing/Pecuniary interest. In re Estate of Reck | 2023-Ohio-4206 | 2nd Appellate District | 11/22/2023 Denial of daughter's Civ.R. 60(B) motion for relief from judgment that she lacked standing to file a motion to remove executrix of her father's estate is affirmed where daughter had previously filed a declaratory action challenging executrix/successor trustee, and although daughter's motion to remove executrix was denied based on trust's in terrorem clause, which was inapplicable because previously unidentified second amendment to trust disinherited daughter, daughter still lacked standing because she did not possess a pecuniary interest in the trust at time she filed the motion to remove the executrix.

Wrongful death/Proceeds/Distribution. In re Estate of Snider | 2023-Ohio-3576 | 5th Appellate District | 10/03/2023 In mother's application to approve settlement and distribution of wrongful death and survival claims from death of son, trial court erred in its distribution of settlement where, although appellant-decedent's child previously claimed that she was unrelated to decedent, decedent's acknowledgment of paternity was final and enforceable, R.C. 3111.25, both appellant and decedent's other child were entitled to a rebuttable presumption to have suffered damages by reason of the wrongful death, R.C. 2125.02(A), and even though appellant was not entitled to equal distribution, the disparity in distribution was an abuse of discretion.

Disinterment/Timeliness/Settlement. In re Disinterment of Glass | 2023-Ohio-3509 | 2nd Appellate District | 09/29/2023 In daughter's appeal of trial court's order granting applicants-daughter's siblings' applications to disinter their parents to be moved into a new family mausoleum, judgment is affirmed since applicants did not waive their right to seek disinterment where the applications were filed many years after the decedents died, but courts have not found fault where the disinterment occurred a long time after a decedent was initially buried; as well, trial court did not err in admitting evidence of the parties' settlement negotiations, Evid.R.

408, and in denying daughter's motion to strike the applicants' closing brief and daughter's alternative motion to reopen, without holding an evidentiary hearing, since, inter alia, reopening the case to present two otherwise irrelevant letters in rebuttal to a closing brief is unnecessary.

Trustee/Beneficiary/Standing. Pond v. Conkle | 2023-Ohio-3438 | 10th Appellate District | 09/26/2023 In trustee's action against sublessee of house rented to decedent, alleging that sublessee failed to pay agreed rent and caused damage to the property, trial court erred in dismissing the action on reasoning that trustee lacked standing where trustee had been reinstated as trustee at the time the complaint was filed, which gave him standing to bring suit on behalf of trust, and trustee was also the sole beneficiary of trust and therefore had standing in individual capacity.

Trust/Income. Boli v. Huntington Natl. Bank, Trustee | 2023-Ohio-3308 | 5th Appellate District | 09/18/2023 In heir's action against trustee-bank, seeking, inter alia, distribution of the assets of her father's trust, summary judgment in favor of trustee was not error where the trust provided for payment of income from the trust estate to heir and her sister, who subsequently died, and heir was not entitled to the principal of either her part or deceased sister's part of the trust, pursuant to its terms.

Trust/Fiduciary duty/Reform. Meehan v. Meehan | 2023-Ohio-2772 | 8th Appellate District | 08/10/2023 In plaintiff-co-trustee's action seeking a declaration invalidating mother's reformed trust and will, judgment in favor of defendants-siblings on counterclaims for, inter alia, breach of fiduciary duty was not error where evidence showed that plaintiff had irresponsibly handled funds and refused to cooperate with co-trustee, mother's mistake in signing transfer documents without using trustee designation was properly reformed in accordance with R.C. 5804.15, and previously deceased father's trust was appropriately terminated under R.C. 5904.11(B).

Family Law and Domestic Relations

Shared parenting/Request. Arroyo v. Walkingstick | 2023-Ohio-4077 | 9th Appellate District | 11/13/2023 In divorce action, trial court erred in adopting a shared parenting plan where neither party requested shared parenting in writing, and when neither party requests a shared parenting plan, R.C. 3109.04(A)(1) does not allow a court to sua sponte create a shared parenting plan rather than naming one party residential parent and legal custodian and awarding reasonable visitation to the other party.

Civil protection order. S.Y. v. A.L. | 2023-Ohio-3964 | 6th Appellate District | 10/27/2023 Denial of appellant's petition for a civil protection order after sustaining juvenile appellee's objections to magistrate's decision is affirmed since the trial court found that there was insufficient evidence to suggest that appellant suffered "mental distress" as defined in R.C. 2903.211(D)(2) where appellant had consented to a protection order against him under which appellee was the protected person, and the only "mental distress" that appellant linked to appellee's social media requests of him in the instant case was that appellant stopped using social media out of concern that he might violate appellee's civil protection order against him.

Support/Imputed income. Sanchez v. Vazquez | 2023-Ohio-3914 | 2nd Appellate District | 10/27/2023 In divorce action in which husband challenged the determination of child and spousal support, trial court did not err in calculation of income imputed to husband where husband failed to establish a valid reason to limit himself in his employment search, given his experience and skills in the banking industry, his testimony regarding attempts to secure employment were not found to be credible, and the court considered relevant criteria in R.C. 3119.01(C)(17)(a) in making its determination.

Contempt/Notice/Evidence. Campbell v. Campbell | 2023-Ohio-3896 | 4th Appellate District | 10/19/2023 In divorce action, trial court erred in finding wife in contempt for failure to comply with court orders where, inter alia, husband's motion for contempt failed to provide sufficient notice so that wife could formulate a defense, the court may have permitted testimony concerning parenting time disputes for purposes other than contempt, but used that testimony to support a contempt finding, and the court did not permit wife to be adequately heard regarding her efforts to comply with the court's orders, R.C. 2705.02.

Guardian fees/Court costs/Contempt. Ho v. Co | 2023-Ohio-3698 | 1st Appellate District | 10/11/2023 In divorce action, trial court erred in finding wife in contempt for nonpayment of guardian ad litem fees and in imposing a jail sentence where guardian ad litem fees constitute court costs and are taxed as part of costs of proceedings pursuant to Juv.R. 4(G), guardian's appointment and obligation to pay fees fell within scope of Civ.R. 75(B)(2), and because wife's obligation to pay was a civil obligation, she may not be incarcerated for failure to pay, and therefore the court's contempt powers were inappropriately used to enforce wife's payment.

Support/Underemployment/Tax . Todd v. Todd | 2023-Ohio-3677 | 12th Appellate District | 10/10/2023 In divorce action in which trial court reduced the amount of husband's spousal support obligation and recalculated child support, but the court did not reduce spousal support as much as the magistrate recommended, judgment is affirmed since trial court could find that husband was voluntarily underemployed after he lost his better-paying job due to his own actions related to an incident with other employees; also, spousal support payments are no longer deductible from the payor's gross income for tax liability purposes and the payment is not includable as income for the spousal support recipient.

Contempt/Medical expenses/Documentation. Simms v. Hupp | 2023-Ohio-3615 | 9th Appellate District | 10/04/2023 In divorce action dispute about payment for children's medical expenses, trial court erred in finding father in contempt for failure to pay his share of the expenses where the parties' shared parenting plan unambiguously set forth the process for reimbursement of uninsured medical expenses, and because mother failed to provide completed documentation as required under plan, father could not be held in contempt for failing to pay his portion of the children's medical expenses.

Spousal support/Property division/Stock compensation. Wilson v. Wilson | 2023-Ohio-3521 | 9th Appellate District | 09/29/2023 In divorce action in which husband was compensated with employer's stock in addition to his base salary, the trial court did not err in ordering husband to pay spousal support and to include the value of employer's stock payments in calculating his income since the treatment of the company stock is no different than if husband was paid bonuses in cash and he used them

Family Law and Domestic Relations (Continued)

to buy stock or placed the funds in a savings account, and the stock became a marital asset subject to equitable division; the divorce decree only divides the stock earned during the marriage and does not require husband to transfer any future stock bonuses to wife.

Child support/Calculation/Dissent. Rischitelli v. Rischitelli | 2023-Ohio-3458 | 9th Appellate District | 09/27/2023 In divorce action in which wife challenged the calculation of child support, trial court erred in its determination of wife's income where the parties' separation agreement specified that child support should be calculated using wife's current year's employment income, but a previous estimate of her income was used rather than her actual income; there is a dissenting opinion in this case.

Custody/No-contact. Hill v. French | 2023-Ohio-3406 | 6th Appellate District | 09/25/2023 In divorce action in which wife challenged trial court's decision granting husband's motion to modify conditions of parenting time, trial court did not err in issuing its order preventing children from having contact with maternal grandmother where all the statutory best-interest factors listed in R.C. 3109.051(D) were considered, behaviors of wife and grandmother contributed to continuing alienation between husband and children, and the decision was supported by evidence in the record and was not retaliatory.

Support/Expenses/Phone records/Subpoenas. Razick v. Tayeh | 2023-Ohio-3063 | 8th Appellate District | 08/31/2023 In divorce action in which husband asserted that wife's expenses were exaggerated and issued subpoenas for data about wife's siblings' cell phone usage to show that siblings lived with wife, inflating her expenses and impacting her request for support, trial court erred in denying siblings' motion for a protective order where, even if subpoenaed information demonstrated siblings' presence in wife's home, it would not establish that wife's claim for support was exaggerated, and harm to siblings from issuance of subpoenas would outweigh any benefit to husband to obtain information from nonparties.

Domestic relations/Juvenile/Transfer/Jurisdiction. Stalnaker v. Stalnaker | 2023-Ohio-3046 | 9th Appellate District | 08/30/2023 In divorce action, transfer of the case from domestic relations division to juvenile division, on reasoning that placement of the children with either parent was not in children's best interest, was error since juvenile division lacked jurisdiction to hear the case pertaining to parental rights and responsibilities, R.C. 2301.03(I)(2), where the juvenile court would only have jurisdiction if the children were alleged to be abused, neglected, or dependent in a complaint, indictment, or through information, which would give the juvenile court exclusive jurisdiction, R.C. 2151.23(A)(1).

Custody/Disqualification of counsel. Hastings v. Lee | 2023-Ohio-2986 | 5th Appellate District | 08/25/2023 In custody dispute in which father filed a motion to modify parental rights and responsibilities, trial court did not err in granting father's motion to disqualify mother's counsel where counsel was mother's stepfather, who watched the minor children and provided them regular transportation, and he was likely to be a necessary witness as to personal observations and interactions with the children; as well, mother did not file financial affidavits or provide testimony or evidence regarding her finances to show that disqualification of counsel would result in substantial hardship, Prof. Cond.R. 3.7.

Birth record/Sex marker/Dissent. In re B.C.A. | 2023-Ohio-2931 | 11th Appellate District | 08/21/2023 Denial of parents' application to change the sex marker on child's birth record was not error since the probate court lacked authority to make such a change on reasoning that its authority is limited to making corrections to birth records as to circumstances as they existed at the time of birth, R.C. 3705.15, and the statute does not grant broad authority to allow changes to birth records to reflect later-in-life identifications; this case has a dissenting opinion.

Discovery/Property division. Williams v. Thomas | 2023-Ohio-2856 | 10th Appellate District | 08/15/2023 In divorce action in which wife challenged the allocation of marital and separate property, trial court erred in declining to require husband to comply with discovery order and in deferring the issue until after hearing the merits of the case where husband's failure to comply with discovery order impeded the determination of basic facts about his assets, and wife was prejudiced by the inability to present evidence regarding mortgage reductions and proper division of marital assets, R.C. 3105.171.

Frozen embryo/Disposition/Written consent. Reeder v. Reeder | 2023-Ohio-2678 | 1st Appellate District | 08/02/2023 In divorce action involving disposition of the parties' frozen embryo, trial court erred in awarding to wife the ability to use the embryo without husband's express consent where the parties dispute whether, under the cryopreservation agreement, they consented to each other's use of the embryo when they selected the disposition of the embryo upon divorce provision or whether the consent provision requires an additional written document showing that they consented to the other's use of the embryo, and the correct interpretation of the contract requires a separate writing expressing the consent of the parties to allow one partner to use the embryo to achieve pregnancy.

Prenuptial agreement. Downing v. Downing | 2023-Ohio-2673 | 1st Appellate District | 08/02/2023 In divorce action in which wife challenged the validity of prenuptial agreement, judgment finding the agreement enforceable is affirmed where wife admitted that she signed the agreement, she was presented with the agreement weeks before the marriage but did not review the document or seek legal counsel, husband's ultimatum to sign agreement did not constitute duress or render it unenforceable, and although husband's financial disclosures in agreement were generalized, the parties drafted the agreement together and evidence showed that wife had full knowledge of husband's assets.

Health Care

Contract/Nursing facility/Arbitration. Estate of Myers v. Healthcare Ventures of Ohio, L.L.C. | 2023-Ohio-4254 | 3rd Appellate District | 11/27/2023 In estate's negligence action against nursing facility, alleging that substandard care to decedent led to her death, trial court did not err in denying facility's motion to compel arbitration where decedent was subject to an arbitration agreement for her first stay at the facility, but there was no arbitration clause in agreement for her second stay in a separate unit, and the first agreement did not apply to admission to the separate facility because decedent had been discharged prior to the second stay.

Insurance

Homeowner's/Dog bite/Exclusion. Grange Indemn. Ins. Co. v. Hinds | 2023-Ohio-4085 | 3rd Appellate District | 11/13/2023 In insurer's declaratory action seeking to be excused from indemnifying insured-dog owner for liability on claims asserted in a related case by victim of dog-bite injuries, summary judgment in favor of insurer was error where, although insured's homeowner's policy exclusion was clear and unambiguous to deny coverage if the dog had previously caused injury, and there was evidence that the dog had bitten or nipped a person or another animal on five prior occasions, the question remains as to whether the dog was reacting to protect people or property from imminent harm in the five prior occasions when it caused injury to a person or another animal.

Discovery/Choice of law/Dissent. Scott Fetzer Co. v. Am. Home Assur. Co., Inc. | 2023-Ohio-3921 | Supreme Court of Ohio | 11/01/2023 In action by insured, asserting bad faith on the part of insurer in denying insured's claim for coverage of costs of hazardous waste remediation in locations outside Ohio, and insured moved to compel insurer to produce documents during discovery, administrative law judge's order for insurer to produce some of the documents, affirmed on appeal, is affirmed where the court applied 1 Restatement of the Law 2d, Conflict of Laws, Sec. 145 to hold that the documents were not protected by the attorney-client privilege pursuant to Ohio law because insured's claim sounded in tort, not being rooted in any particular text of the parties' contract, and under choice of law analysis, the law of Ohio applies since Ohio has the most significant relationship to the occurrence as that is where the alleged injury from bad faith took place; there is a dissenting opinion in this case.

Motor vehicle/Two insurers/Insured person defined/Dissent. Acuity, A Mut. Ins. Co. v. Progressive Specialty Ins. Co. | 2023-Ohio-3780 | Supreme Court of Ohio | 10/19/2023 In dispute between two insurers regarding coverage for a single-vehicle accident, the court of appeals erred in ruling that the policies of both insurers covered the same risk under competing excess-insurance clauses since, under the plain meaning of the defendant-insurer's policy, the driver was not an "insured person" where that policy covered a permissive user of a covered automobile only when the user "is not insured for liability coverage by any other insurance policy," and because the driver was insured under his father's policy with plaintiff-insurer, driver did not qualify as an "insured person" under the defendant-insurer's policy, so under the plain language of the contracts at issue, plaintiff-insurer is responsible for providing liability coverage to the driver for the accident; there is a dissenting opinion in this case.

Motor vehicle/Discovery/Valuation of claim. Ryan v. State Farm Mut. Auto Ins. Co. | 2023-Ohio-3731 | 2nd Appellate District | 10/13/2023 In insured's breach of contract action against insurer, seeking uninsured motorist coverage for injuries sustained in vehicle collision with uninsured motorist, trial court erred in ordering insurer to produce its claim file, including a valuation of insured's claim, during discovery in advance of trial where the value of insured's claim is the primary issue to be litigated, and regardless of whether the documents constituted information protected as work product or by the attorney-client privilege, the documents in the file should have been deemed protected from discovery while the determination of value of the underlying claim remained pending.

Property/Bad faith/Discovery. A. Morgan Bldg. Group, L.L.C. v. Owners Ins. Co. | 2023-Ohio-3133 | 9th Appellate District | 09/06/2023 In insured-building owner's action against insurer, claiming bad faith in handling insured's vandalism and fire claims, where insurer sought a protection order concerning any discovery related to the bad faith claim, trial court did not err in granting insured's motion to unseal claims notes where attorney-client communications that are relevant to the insurer's defense of a bad faith claim, but which do not themselves show any bad faith, are not discoverable, but insurer did not demonstrate that its records met this requirement, and insurer also failed to establish that any parts of the unredacted claims file notes were not related to the issue of coverage or were created after denial of coverage.

Juvenile

Custody/Change in circumstances. In re L.F. | 2023-Ohio-4199 | 1st Appellate District | 11/22/2023 In custody action in which mother challenged trial court's change in custody, judgment is affirmed where father showed a change in circumstances warranting change in custody because mother's negative feelings toward father could impact child's emotional development, and R.C. 3109.04(F)(1) did not require active harm to child to determine that custody modification was in child's best interest.

Custody. In re J.L.C. | 2023-Ohio-4081 | 12th Appellate District | 11/13/2023 In action in which mother challenged a change in custody of child, trial court did not err in designating father as residential parent where mother's argument that magistrate improperly relied on guardian ad litem's non-expert testimony on the subject of parental alienation is without merit since magistrate did not rely on that testimony, there is evidence that mother's accusations against father were harming child, and all pertinent evidence was considered by the court prior to finding that a change in circumstances had occurred and that the change in custody was in child's best interest pursuant to R.C. 3109.04(E)(1).

Child support/Disability payments. In re K.S. | 2023-Ohio-4059 | 2nd Appellate District | 11/09/2023 In mother's appeal of decision terminating father's child support order and ordering her to repay overpayment, judgment is affirmed where father became eligible for Social Security disability benefits, derivative benefits for child support were deducted each month, and disability benefits were characterized as a substitute for payments father was unable to provide; mother did not file objections to magistrate's decision, even though she could have objected after the court adopted the decision the same day it was entered, Juv.R. 40(D)(3).

Delinquency/Transfer. In re D.L. | 2023-Ohio-4029 | 11th Appellate District | 11/06/2023 In an adjudication of juvenile as delinquent by admission to adult burglary and to adult obstruction of official business in one case, and juvenile was also adjudicated delinquent in a second case by agreement to adult aggravated assault and adult grand theft, and transfer of those cases to the juvenile's county of residence, with that juvenile court committing the juvenile to the department of youth services in both cases with the commitments to be served consecutively, was not error, R.C. 2151.271 and Juv.R. 11, but original juvenile court's attempt to transfer a third case in which it adjudicated juvenile as delinquent of adult aggravated robbery to the juvenile's county of residence was

error since the transferor court exceeded its authority because it had made a dispositional order in that case prior to the attempted transfer.

Custody/Contempt/Criminal. In re Contempt of Mallory-Nichols | 2023-Ohio-3982 | 8th Appellate District | 11/02/2023 In custody dispute in which case worker was found in contempt for violating a court order, trial court erred in denying case worker's motion to set aside magistrate's order where, although case worker authorized mother's unsupervised visits with child in violation of the court's order, the authorization was a mistake and was remedied by case worker, contempt was criminal in nature because imposition of a fine acted as punishment for case worker's disobedience and did not afford him the opportunity to purge, and court did not find case worker guilty of contempt beyond a reasonable doubt or find that he intentionally violated the order.

Custody/Appointment of attorney. In re N.S. | 2023-Ohio-3983 | 8th Appellate District | 11/02/2023 Award of permanent custody of children to agency is affirmed where mother's argument that attorneys were not provided for her children and that the court improperly denied a continuance to allow appointment of counsel are without merit since mother did not request counsel and does not argue plain error on appeal, child's single statement expressing wish to return to mother did not establish a repeated expressed desire for reunification, and child also expressed a desire to remain in foster home during same interview; as well, there was evidence that mother had a history of relapse following drug treatment services, and placement for legal custody was not identified, R.C. 2151.414.

Custody. In re M.C. | 2023-Ohio-3979 | 8th Appellate District | 11/02/2023 Award of temporary custody of abused and dependent child to agency is affirmed where there is evidence that, inter alia, mother chained child to bed, mother declined to submit to a required mental health evaluation after admitting to a diagnosis of a mental health condition, and mother's inability to properly communicate with child escalated child's behavior issues, while child is doing much better in her current placement, engaging in therapy, getting good grades, and working very hard, R.C. 2151.414(D) and 3109.04(F)(1).

Bindover. In re I.S. | 2023-Ohio-3975 | 8th Appellate District | 11/02/2023 In a delinquency action for, inter alia, adult aggravated murder, the juvenile court erred by not binding over the juvenile to the general division where juvenile's admission that he sat behind the victim in the victim's vehicle and the forensic evidence of the trajectory of bullets that caused the victim's death supported that the victim's death resulted from shots coming from the inside or the outside of the decedent's vehicle on the driver's side, providing a fair probability that the juvenile shot the victim since he was the only person who approached the victim's car on the side where the shots seem to have been fired, he placed himself at that spot and his story about another shooter from the passenger side is contradicted by the evidence.

Dismissal/Vacate/Objections/Notice. In re X.M. | 2023-Ohio-3956 | 9th Appellate District | 11/01/2023 In action alleging that child and two siblings were abused, neglected and dependent, trial court erred in granting agency's motion to vacate a prior order of dismissal of the case, based on agency's failure to perfect service on alleged father, where agency did not preserve its challenge to the dismissal because it failed to file objections to the magistrate's decision, the motion to vacate was granted before other parties received notice of the motion, and agency failed to assert grounds for vacation of prior dismissal, under Civ.R. 60(B).

Bindover/Remand. In re D.W. | 2023-Ohio-3887 | 8th Appellate District | 10/26/2023 In a delinquency proceeding charging juvenile with adult improperly discharging a weapon into habitation, two counts of felonious assault, discharge of firearm on or near prohibited premises, having weapons while under disability, improperly handling firearms in a motor vehicle and obstructing official business, the court of appeals remands the juvenile court's denial of discretionary transfer to the adult court, R.C. 2152.12(B), since the juvenile court failed to state its determinations or findings regarding witness credibility on the record, making it impossible for the court of appeals to review the juvenile court's reasoning.

Custody/Case plan. In re C.G. | 2023-Ohio-3857 | 5th Appellate District | 10/24/2023 Award of permanent custody of child to agency was error where parents successfully worked case plan, maintained sobriety, gained employment, completed mental health and substance abuse counseling, and completed parenting classes, and case plan should have been designed to provide sufficient time for parents to show ability to maintain their achievements, R.C. 2151.414.

Custody/Grandmother/Companionship. In re L.D.R.S. | 2023-Ohio-3765 | 11th Appellate District | 10/16/2023 In custody dispute, termination of paternal grandmother's companionship rights after stepmother's adoption of child was error where the effects of adoption described in R.C. 3107.15(A)(1)(a) did not apply to grandmother because she was a relative of the spouse of the adopting stepparent, and prior cases in which the statute was applied to divest biological grandparents of companionship rights did not involve relatives of a biological parent in a stepparent adoption.

Child support/Adoption/Overpayment. Wightman v. Darty | 2023-Ohio-3748 | 12th Appellate District | 10/16/2023 In child support dispute in which father continued to make child support payments after child was adopted by stepfather, trial court did not err in terminating father's child support obligation and in ordering mother to return father's overpayment where mother failed to notify child support enforcement agency of adoption, as required under R.C. 3119.87, any failure by the agency to complete an investigation following adoption did not entitle mother to retain overpaid child support, and father was not obligated to provide adoption records to agency.

Custody/Shared parenting/ Communication. Simpson v. Genovese | 2023-Ohio-3532 | 11th Appellate District | 09/29/2023 In custody dispute, trial court did not err in adopting magistrate's decision that recommended terminating parties' shared parenting plan, in naming mother residential parent and legal custodian of the parties' minor child, and in precluding stepmother from contacting mother except in an emergency, where there is evidence that father's communications with mother were degrading and threatening and that father either initiated or escalated tensions between the parties, and the failure of parents to communicate or cooperate effectively is grounds for terminating an existing shared parenting plan, R.C. 3109.04(E)(2)(c).

Custody/Legal/Caring parents. In re K.J.F. | 2023-Ohio-3607 | 7th Appellate District | 09/28/2023 In custody dispute in which the record reflects that child has two caring parents who

are capable of meeting his needs, and both demonstrated a commitment to his well-being and expressed a desire to be his residential parent, trial court's judgment granting legal custody of child to father as being in child's best interest is affirmed where, inter alia, mother moved to another state because of her husband's new career opportunity, child expressed a strong desire to live with his father, child had better and more significant relationships with family members in Ohio rather than the other state, and child was better adjusted to his school and community in Ohio, R.C. 3109.04(B)(1).

Bindover/Discretionary transfer/ Void. In re E.S. | 2023-Ohio-3473 | 8th Appellate District | 09/28/2023 In a juvenile delinquency proceeding for, inter alia, adult involuntary manslaughter, 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 since the trial court was divested of jurisdiction to issue the order dismissing the motion for discretionary transfer while In re E.S. II was pending in the Ohio Supreme Court, and thus the order is void and vacated.

Obstruction of justice/First Amendment. In re S.J. | 2023-Ohio-3441 | 1st Appellate District | 09/27/2023 Adjudication of juvenile as delinquent for, inter alia, obstruction of justice if committed by an adult was not supported by sufficient evidence where juvenile was in a public space recording with her cellphone the arrest of a suspect that the juvenile was privileged to record under the First Amendment of the U.S. Constitution since no nexus was shown between the defendant's affirmative act of recording a police encounter with another individual and the alleged obstruction since the officer did not comply with the police manual policy to not intentionally block or obstruct a recording device, and the policy requires the officer to direct the citizen to move to a position where the safety risk is lessened; also discussed, juvenile was also not delinquent for resisting arrest, disorderly conduct or escape.

Custody/Contempt/Impossibility. Slosser v. Supance | 2023-Ohio-3437 | 10th Appellate District | 09/26/2023 In custody dispute in which both parents filed motions to show cause for violating provisions of shared parenting plan, trial court did not err in declining to hold mother in contempt for denying father's weekend parenting time on one occasion where mother was under quarantine for illness and was unable to deliver child to exchange location, she established the defense of impossibility of compliance, and father chose not to exercise his parenting time under mother's reasonable alternative to pick the child up at her residence, R.C. 3109.12, 2705.031.

Custody/Attorney fees/Grounds/ Reasonableness. In re I.C. | 2023-Ohio-3387 | 2nd Appellate District | 09/22/2023 In custody dispute in which father's complaint for reallocation of parental rights was dismissed without prejudice, the court's order requiring father to pay mother's attorney fees is reversed where the court did not lose jurisdiction to consider mother's properly filed motion for attorney fees, but mother did not specifically set forth grounds for which she sought attorney fees or present evidence as to the reasonableness of the amount.

Bindover/Probable cause. In re B.A.T. | 2023-Ohio-3366 | 8th Appellate District | 09/21/2023 In a delinquency action for, inter alia, adult aggravated robbery, the juvenile court erred in determining there was not probable cause to believe that the juvenile committed the acts alleged in the complaint and denying the state's motions for mandatory and discretionary transfers of juvenile to the general division since aggravated robbery is a category-two offense, R.C. 2152.02(BB)(1), juvenile was 17 years-old at the time the offense was committed and the complaint alleges that he displayed a firearm during the commission of the offense, and thus a mandatory-bindover proceeding was required, R.C. 2152.10(A)(2)(b); also, since there was a showing that there was a fair probability that the juvenile committed the discretionary offenses, these offenses should also be bound over to the adult court with the mandatory-bindover offense.

Custody/Dependent child. In re M.G. | 2023-Ohio-3423 | 7th Appellate District | 09/21/2023 Award of legal custody of adjudicated dependent child to father is affirmed where father actively sought custody and engaged in agency services, was involved with child's school and extra-curricular activities, facilitated child's contact with mother and had a cooperative relationship with maternal grandmother, and he had strong parenting skills, integrating child into his home, while mother was incarcerated for a period and failed to accept responsibility for her past actions, R.C. 2151.414.

Bindover/Tier III sex offender/Cruel and unusual punishment. State v. Spencer | 2023-Ohio-3359 | 8th Appellate District | 09/21/2023 In bindover of juvenile to adult court and subsequent plea to, inter alia, six counts of aggravated robbery and rape, defendant's automatic classification as a Tier III sex offender was not plain error where his claim that it constituted cruel and unusual punishment under the United States and Ohio Constitutions is without merit since he was no longer a "juvenile offender" after transfer to adult court, Golson, and the trial court complied with its obligation to carefully consider his "youth and its characteristics as mitigating factors" pursuant to R.C. 2929.19(B)(1)(b) before imposing a sentence.

Dependent child/Mother's incapacity. In re R.S. | 2023-Ohio-3323 | 1st Appellate District | 09/20/2023 Adjudication of child as being dependent, R.C. 2151.04(B), on the basis of mother's incapacity is reversed because the agency failed to prove that child was dependent by clear and convincing evidence, Juv.R. 29(E)(4), since mother demonstrated that her mental incapacity did not negatively affect her ability to ensure child's health and physical safety where mother voluntarily took child to grandmother's home on the second day of mother's recognition of her problem, and then mother proceeded to seek help for herself by contacting law enforcement, reporting her issues, and being admitted to hospital.

Custody. In re A.C.F. | 2023-Ohio-3296 | 12th Appellate District | 09/18/2023 In custody action in which father appeals the continuation of parties' shared parenting plan and the designation of mother as residential parent for school purposes, the trial court's judgment is affirmed where child's routine involves spending time with both sides of his family, there was no proof that mother caused child anxiety or that her home was chaotic, mother was not careless in selecting a school for child, and dramatic shifts in schedule, as requested by father, would not be in child's best interest, R.C. 3109.04.

Delinquency/Addressing juvenile/Juv.R. 29(D)(1). In re D.P. | 2023-Ohio-3120 | 11th Appellate District | 09/05/2023 In an adjudication of delinquency by plea to adult rape, the juvenile court erred by failing to address juvenile personally

when taking his plea where the court instead asked juvenile's attorney "does your client want to change his plea?" to which counsel responded affirmatively, in violation of Juv.R. 29(D)(1); also discussed, the juvenile court did not err by not appointing a guardian ad litem for juvenile due to juvenile's claimed potential conflict of interest with his parents.

Delinquency/Resisting arrest/Weight of evidence. In re J.C. | 2023-Ohio-3070 | 1st Appellate District | 09/01/2023 Adjudication that juvenile was delinquent for adult resisting arrest, R.C. 2903.21(A), was not supported by sufficient evidence that there was probable cause for a lawful arrest where the arresting officer stated that he spoke with the group home supervisor where defendant and the alleged aggravated menacing victim were residents, but the officer gave no details as to what these witnesses said, nor did he did testify as to any circumstantial evidence to his belief that the juvenile had engaged in aggravated menacing, and a bare suspicion is insufficient to establish there was probable cause to arrest the juvenile.

Resisting arrest/Weight of evidence. In re J.C. | 2023-Ohio-3070 | 1st Appellate District | 09/01/2023 Adjudication that juvenile was delinquent for adult resisting arrest, R.C. 2903.21(A), was not supported by sufficient evidence that there was probable cause for a lawful arrest where the arresting officer stated that he spoke with the group home supervisor, where defendant was a resident and the alleged aggravated menacing victim, but the officer gave no details as to what the witnesses said, nor did he did testify as to any circumstantial evidence to his belief that the juvenile had engaged in aggravated menacing, and a bare suspicion is insufficient to establish there was probable cause to arrest the juvenile.

Delinquency/Disposition/Adult sentence/Facility type. In re S.I.G. | 2023-Ohio-2912 | 12th Appellate District | 08/21/2023 In a delinquency proceeding, juvenile admitted to adult rape and a serious youthful offender specification and, following a dispositional proceeding, was sentenced to an adult prison term of 10 years to life in prison, with sentence stayed pending successful completion of his juvenile disposition, although the juvenile did not successfully complete his juvenile disposition at a community correction facility, the juvenile court erred by invoking the adult sentence since a community correction facility is not a department of youth services facility, In re N.G.

Custody/Nunc pro tunc order/ Objections. In re A.W.E-M. | 2023-Ohio-2896 | 4th Appellate District | 08/18/2023 In custody dispute in which father asserts that the trial court's order from which he is appealing is incorrectly designated as a nunc pro tunc order, trial court erred in issuing a nunc pro tunc order where the court made substantive revisions concerning issues that were not decided at the time its prior order was issued, so the judgment is reversed and the case is remanded; the issue of whether the court's substantive revisions accurately reflected the parties' settlement agreement was not properly preserved for appeal because the trial court's order contained an unenforceable provision which prevented the parties from filing objections to the magistrate's decision under Civ.R. 53.

Bindover/Sentencing/Probable cause. State v. Turner | 2023-Ohio-2874 | 8th Appellate District | 08/17/2023 In a conviction by plea of bound-over juvenile to murder, attempted murder and having weapons while under a disability, and imposition of, inter alia, "25 years" imprisonment to be served consecutively to the mandatory three-year firearm specification on the murder count, seven-year imprisonment on the attempted murder count to be served consecutively to the "25-year" sentence for murder and 36 months imprisonment to be served concurrently to the previous prison terms for a total of "25 years" to life, the state concedes the trial court erred by sentencing defendant to "25 years" to life as well as the weapons while under a disability charge since no probable cause had been found by the juvenile court for that conduct, and also, the adult court did not have jurisdiction of attempted murder charge of another individual since the juvenile complaint only involved the juvenile's shooting and killing of the victim.

Delinquency/Adult portion. In re T.M. | 2023-Ohio-2804 | 9th Appellate District | 08/14/2023 After a conviction of juvenile by plea to complicity to commit robbery, R.C. 2911.02, with a serious youthful offender specification and imposition on the adult portion of a stayed two to three-year sentence with an additional mandatory one-year sentence for a gun specification to be served consecutively, and on the juvenile portion, appellant was given a suspended commitment to the department of youth services, appellant subsequently committed a number of offenses and the state declined to file a motion to invoke the adult portion of the serious youthful offender dispositional sentence, the juvenile court erred in sua sponte imposing the adult sentence, R.C. 2152.14(B), by relying on pending charges and hearsay evidence to make the required findings by clear and convincing evidence under R.C. 2152.14(E)(1).

Delinquency/Motion to suppress. In re J.T. | 2023-Ohio-2695 | 1st Appellate District | 08/04/2023 In an adjudication of juvenile as delinquent for adult offenses of, inter alia, carrying a concealed weapon and possession of drugs, the trial court's denial of motion to suppress evidence recovered from juvenile's person during an investigatory stop that occurred several days after a shooting was error where the identified citizen informant had no information other than surveillance recordings showing a group at the church where he was the pastor, and one of the individuals was wearing a red sweatsuit and displaying a gun, but his face could not be discerned, and the surveillance tape at the gas station where the informant saw a group of individuals, one who was wearing a red sweatsuit, but no gun was found on him, although appellant was found to have a gun when searched by the officer; juvenile was discharged.

Bindover/Discretionary. In re J.S. | 2023-Ohio-2675 | 1st Appellate District | 08/02/2023 In an adjudication of juvenile as delinquent of adult felony offenses, appeal by the state of the juvenile court's denial of a discretionary transfer of jurisdiction over juvenile from the juvenile court to the common pleas court was not error since the juvenile court considered the appropriate statutory factors in R.C. 2152.12(D), as well as the seriousness of the underlying charged offenses and the safety of the community, even though the expert opinion concluded that the juvenile was not amenable to treatment in the juvenile system, since the expert's report did not reach conclusions on all the statutory factors and was limited in what material was available to her, and there is some rational basis in the record to support the court's findings when applying those factors, Marshall.

Labor and Employment

Discrimination/Race/Prima facie case. Smith v. Stow | 2023-Ohio-4302 | 9th Appellate District | 11/29/2023 In plaintiff-police officer's employment discrimination action against defendants-city and police chief for disparate treatment based on race, summary judgment in favor of defendants was error where plaintiff's deposition testimony did not constitute an admission he was not similarly situated to promoted officer, defendant could have promoted plaintiff under the "rule of three" but left one position unfilled, and nondiscriminatory reasons proffered by defendants should not have been considered at prima facie case stage, R.C. 4112.02.

Wrongful termination/Public policy/Personal protection. Werkowski v. EDP Renewables N. Am., L.L.C. | 2023-Ohio-4178 | 3rd Appellate District | 11/20/2023 In at-will employee's wrongful termination in violation of public policy action against employer after employee reported employer's manager's alleged wrongdoing in the form of improperly attempting to influence a public official, employer's motion to dismiss is affirmed where, even if statutes establish a clear public policy against official corruption, public policy is adequately protected by penalties imposed for violations of existing statutory schemes; also, while lack of a personal remedy does not, by itself, jeopardize a public policy where a governmental or societal interest is at stake, there are statutory provisions which protect whistleblowers, but employee did not avail himself of those personal protections.

Discrimination/Arbitration/Employee handbook. Bauer v. River City Mtge., L.L.C. | 2023-Ohio-3443 | 1st Appellate District | 09/27/2023 In employee's discrimination action against employer, alleging failure to intervene when she was being harassed by supervisor, trial court erred in granting employer's motion to dismiss or to stay proceedings and compel arbitration, based on arbitration provision in employee handbook, where employee handbook was not a binding contract because the parties did not intend for language in handbook to be legally binding, there was no meeting of the minds because handbook could be modified by employer without notice to employee, and the arbitration provision was not an enforceable contract on its own.

Promotional exam/Irregularities. State ex rel. Bower v. Cincinnati | 2023-Ohio-3369 | 1st Appellate District | 09/22/2023 In police sergeants' action against city, alleging that scoring irregularities on promotional exam prevented them from receiving fair scores, judgment in favor of sergeants was not error where sergeants were entitled to a quasi-judicial hearing on their claims because the anonymity rule for grading exams was violated when their names were included on the exams, and they should have been ranked higher on the promotion list and promoted prior to expiration of the list because rights to promotions were vested while the list was still valid, R.C. Ch. 2506.

Contract/Breach/Relief from judgment. Champlain Ents., L.L.C. v. Kuiper | 2023-Ohio-3059 | 8th Appellate District | 08/31/2023 In airline's breach of employment contract action against pilot for leaving employment prior to commitment period under the parties' agreement, which included a hiring bonus, resulting in default judgment for airline, trial court erred in denying pilot's motion for relief from judgment where pilot presented the defense that he had repaid the correct bonus amount, per agreement, that his original counsel's misconduct included a series of events that amounted to inexcusable neglect, Civ.R. 60(B)(5), and that his six-month delay in filing the motion for relief was reasonable since he was not aware of the default judgment.

Public employee/Re-hiring/Vacancy/Competitive examination. State ex rel. Internatl. Assn. of Fire Fighters, Local 1536, AFL-CIO v. Sakacs | 2023-Ohio-2976 | Supreme Court of Ohio | 08/29/2023 Ruling in favor of city in firefighters' action seeking to compel city to use the competitive promotional-examination process to fill vacancy of fire chief was error where city erroneously argued that since fire chief retired and was rehired the following day, there was no vacancy as there was continuous service and no break in payroll administration; under the plain language of R.C. 124.48, a vacancy in a promoted-rank position in a fire department occurs automatically upon the incumbent's retirement, and the city was required to fill the position of fire chief pursuant to the competitive promotional-examination process outlined in R.C. 124.48 when the chief retired.

Certificate of qualification/Presumption. In re Deran | 2023-Ohio-2902 | 6th Appellate District | 08/18/2023 Denial of petition for certificate of qualification for employment to allow petitioner to seek a physician's license after fulfilling his sentencing obligations is reversed and remanded where the court focused on the factors in R.C. 2953.25(C)(3) without considering the rebuttable presumption in favor of granting such petitions provided in R.C. 2953.25(C)(5), and the court did not find by clear and convincing evidence that petitioner had not been rehabilitated, in order to overcome that presumption.

Discrimination/Settlement/Enforcement. Zele v. Ohio Bell Tel. Co. | 2023-Ohio-2875 | 8th Appellate District | 08/17/2023 In employee's action against employer alleging, inter alia, sex discrimination, resulting in an alleged settlement agreement, trial court erred in granting employer's motion to enforce the alleged settlement agreement and in granting a motion to dismiss where the existence and terms of the agreement were disputed by employee, journal entries were in conflict as to whether a settlement had been reached in mediation, and an evidentiary hearing must be conducted prior to granting employer's motions.

Wrongful termination/At-will employee/Accommodation/Protected activity. Childs v. Kroger Co. | 2023-Ohio-2034 | 10th Appellate District | 08/03/2023 In employee's discrimination and wrongful termination action against former employer, alleging that his termination from employment was improperly based on a previously disclosed criminal conviction, summary judgment in favor of employer was not error where, although employee's conviction did not disqualify him from employment when he was initially hired, when his employment changed to management and being an at-will employee, he was no longer protected as a union member whose terms of employment were governed by a collective bargaining agreement, and employer could terminate employee's employment for any reason not contrary to law, including his prior conviction; the opinion in this case is a reissue of the original opinion, with modifications, where a footnote states that in light of employee's reconsideration motion and accompanying amicus brief, the question whether a request for accommodation constitutes protected activity under Ohio law warrants full briefing before definitive resolution by this court.

Procedure

Prohibition/Jurisdiction. State ex rel. Ames v. Ondrey | 2023-Ohio-4188 | Supreme Court of Ohio | 11/28/2023 After citizen's underlying action, asserting that political committee violated the Open Meetings Act, was dismissed and judge ruled that citizen engaged in frivolous conduct and scheduled a hearing on award of attorney fees, denial of citizen's petition for a writ of prohibition to prevent judge from holding the hearing is affirmed on reasoning that the judge did not exceed his jurisdiction even if he erred in making his frivolous conduct finding before holding a hearing required by R.C. 2323.51(B)(2) since, if an error was made, it was an error in the exercise of jurisdiction rather than an action in excess of jurisdiction, and citizen has an adequate remedy in the ordinary course of law by filing an appeal following the issuance of a final order.

Appeal/Denial of continuance/Frivolous conduct/Vexatious litigators. H.R. v. P.J.E. | 2023-Ohio-4185 | Supreme Court of Ohio | 11/22/2023 In a divorce action in which appellant's attorneys appealed denial of their motion for a continuance, appellant's attorneys are sanctioned for instituting a frivolous appeal, are designated vexatious litigators, S.Ct. Prac.R. 4.03(A), and are ordered to pay appellee's attorney fees since the appeal is neither warranted by existing law nor supported by a good-faith argument for the extension, modification, or reversal of existing law where attorneys' jurisdictional memorandum failed to acknowledge the body of law directly holding that denial of a motion for a continuance is not immediately appealable as a final order, appellant's attorneys previously asked the court on several occasions to accept an appeal of a trial court's denial of a motion for a continuance, and appellant's attorney of record was not persuasive in responding to the court's order to show cause why sanctions should not be imposed for instituting a frivolous appeal.

Vexatious litigator/Leave. State ex rel. Mobley v. Franklin Cty. Bd. of Commrs. | 2023-Ohio-3993 | Supreme Court of Ohio | 11/07/2023 In mandamus action in which relator mailed objections to magistrate's decision, and in another action a separate court subsequently declared that instant relator was a vexatious litigator, court of appeals' sua sponte dismissal of the mandamus action on reasoning that relator was a vexatious litigator, and the court's denial of relator's motion for leave to consider his objections, is reversed and is remanded for consideration of relator's motion for leave since, at the time relator mailed his objections, he had the right to continue or resume the proceeding because he had not yet been declared a vexatious litigator, and when relator mailed his motion for leave, he did not continue the proceeding but, rather, complied with the prerequisite step required under R.C. 2323.52(F)(2).

Quo warranto/Judicial office vacancy/Appointment. State ex rel. Repp v. Best | 2023-Ohio-3924 | Supreme Court of Ohio | 11/02/2023 In relator's action for a writ of quo warranto to oust judge, who was appointed to fill relator's judicial office when relator was suspended from the practice of law for one year, and to declare relator the rightful holder of the office, judgment on the pleadings is granted to respondents since relator did not allege facts showing that the judicial office is being unlawfully held and that he is entitled to hold the office where relator's persistent unavailability for six months due to his suspension caused a vacancy in the judicial office under R.C. 1901.10(B), which allowed the governor to appoint a judge to the office, Ohio Const. Art. IV, Sec. 13; as well, relator's petition for a writ of prohibition is dismissed where city council did not exercise judicial or quasi-judicial power when passing an ordinance declaring that a vacancy in the office of judge existed.

Discovery/Prior to action/Justiciable claim. Iannetta v. Amazon, Inc. | 2023-Ohio-3980 | 8th Appellate District | 11/02/2023 In plaintiff-author's action against defendant-online retailer, alleging a discrepancy between the number of plaintiff's books sold according to his publisher and the number of his books sold according to online retailer, where plaintiff's action was titled "pre-suit complaint for discovery," trial court did not err in granting defendant's Civ.R. 12(B)(6) motion to dismiss where plaintiff's request for discovery, filed pursuant to R.C. 2317.48, sought information to determine if plaintiff had a cause of action, rather than information to clarify specific facts, and therefore plaintiff did not raise a justiciable claim and discovery was not permissible under the statute.

Reinstatement of motion/Law of case/Intervening decision. McCann v. Durrani | 2023-Ohio-3953 | 1st Appellate District | 11/01/2023 In plaintiff's negligence action against defendants-surgeon and service providers, resulting in award of medical expenses to plaintiff, trial court erred in reinstating plaintiff's motion for prejudgment interest and court costs after plaintiff had withdrawn her pending motion to create finality of the judgment and defendant appealed the judgment; trial court's reinstatement of plaintiff's motion, in reliance on the law-of-the-case doctrine, was error because there was an intervening decision by a superior court which was inconsistent with the law of the case, and application of that doctrine was excused.

Attorney fees/Appeal/Remand. State ex rel. Mather v. Oda | 2023-Ohio-3907 | Supreme Court of Ohio | 10/31/2023 In a dispute between subdivision developer and homeowners in which trial court granted summary judgment to homeowners, awarding them attorney fees, and subsequently the court of appeals affirmed the judgment, remanding the case for the limited purpose of issuing a nunc pro tunc order, developer's petition for a writ of prohibition to prevent trial court from entertaining homeowners' request for appeal-related attorney fees is granted because the trial court patently and unambiguously lacks jurisdiction to conduct further proceedings in the underlying case since that court disposed of all pending claims and does not have jurisdiction over homeowners' new claim for unaccrued appeal-related attorney fees, and a lower court regains jurisdiction only on remand from a superior court, limited to the extent of the mandate of the superior court.

Prohibition/Attorney fees/Legal remedy. State ex rel. Squire v. Phipps | 2023-Ohio-3950 | 10th Appellate District | 10/31/2023 In landlord's unpaid rent insurance and related claims action against tenant in which tenant was granted, in part, a summary judgment, landlord's attorney's petition for a writ of prohibition to prevent judge from holding a hearing on tenant's request for attorney fees as prevailing party, pursuant to the parties' contract, is denied where, although a question exists whether the court properly exercised jurisdiction to determine which party prevailed within the context of a partial summary judgment, landlord's attorney had an adequate remedy to challenge jurisdiction through an appeal.

Contempt/Responsive pleadings/Mandamus/Prohibition. State ex rel. Simpson v. Melnick | 2023-Ohio-3864 | Supreme Court of Ohio | 10/26/2023 In underlying action in which prevailing party filed a motion for contempt against

instant relator, and relator filed an answer, counterclaim, and jury demand, which the trial court ordered stricken, prompting relator to file a petition for writs of prohibition and mandamus, the court of appeals' Civ.R. 12(B)(6) dismissal of the petition is affirmed because relator's argument asserts that the judge erred in her exercise of jurisdiction, rather than that the judge lacks jurisdiction, so the writ of prohibition will not lie; as well, there is no right to a jury trial in contempt proceedings unless a long term of imprisonment is involved, relator did not allege any facts suggesting that he would be imprisoned, and relator has an adequate remedy at law by way of appeal of an adverse contempt ruling.

Magistrate's decision/Objections/ Transcript. Ausmundson v. Spicher | 2023-Ohio-3512 | 9th Appellate District | 09/29/2023 In landlord's forcible entry and detainer action against tenants, trial court erred in overruling landlord's objections to the magistrate's conclusions of law on reasoning that landlord failed to request and to submit an official transcript of the evidence, but instead submitted a transcription of audio tape without the court's approval; when a party objects to a finding of fact but fails to support the objection as required by Rule, the trial court may accept the magistrate's findings of fact but must still review the conclusions of law that are the subject of the objections, Civ.R. 53(D).

Jurisdiction/Service/Dissent. Hunt v. Alderman | 2023-Ohio-3454 | 9th Appellate District | 09/27/2023 In plaintiff's refiled complaint against defendant, summary judgment in favor of defendant was not error where service by certified mail, Civ.R. 4.1, was sent to defendant's former address, despite defendant having informed plaintiff of more recent address during deposition in original action, and even though defendant eventually received documents, service was insufficient because it was not reasonably calculated to reach defendant; there is a dissenting opinion in this case.

Class action/Consumer claim/Unjust enrichment. Wuerth v. Nationwide Energy Partners, L.L.C. | 2023-Ohio-3436 | 10th Appellate District | 09/26/2023 In plaintiffs-condominium owners' and apartment tenants' class action against defendant-utilities facilitator, asserting claims of violation of the Consumer Sales Practices Act (CSPA) and unjust enrichment, alleging that defendant deceptively advertised its rates, trial court erred in granting plaintiffs' motion for class certification where defendant did not receive clear notice that its conduct was deceptive or unfair, Admin. Code 109:4-3-12 and R.C. 1345.09(B), a requirement to certify a CSPA class action claim, and contracts between plaintiffs and defendant contain varying language relevant to submetering and therefore class certification should not have been granted as to unjust enrichment claim where plaintiffs failed to show that common issues predominate over individual issues.

Res judicata/Law of case. AJZ's Hauling, L.L.C. v. TruNorth Warranty Program of N. Am. | 2023-Ohio-3097 | Supreme Court of Ohio | 09/06/2023 In plaintiff-hauling company's two breach of contract actions against defendant-warranty company, claiming that defendant failed to pay, or to reimburse, plaintiff for truck repairs where the trial court granted defendant's motion to stay the proceedings and to compel arbitration in the first case, trial court's denial of defendant's motion to stay proceedings and to compel arbitration in the second case, affirmed by the court of appeals, was error since res judicata—specifically, issue preclusion—barred the trial court from considering the enforceability and validity of the arbitration provision in the second case because that issue was previously adjudicated and no exception to res judicata applied where the parties had a full and fair opportunity to litigate the issues in the first action, R.C. 2711.02 and 2711.03.

Jurisdiction/Monetary limit/Dissent. Sweitzer v. 56 Auto Sales | 2023-Ohio-2997 | 12th Appellate District | 08/28/2023 In truck buyer's municipal court Consumer Sales Practices Act action against dealership, trial court's judgment in favor of buyer awarding actual and treble damages above the court's jurisdictional limit is modified down to the jurisdictional threshold on reasoning that buyer did not request relief beyond the limit and therefore municipal court had jurisdiction under R.C. 1901.17; here the excess award did not qualify as an exception to the limit, allowing the court to award interest, damages for detention of property, or costs accrued after commencement of the action, and there is a dissenting opinion.

Judge disqualification/Stay/Interviews. In re Disqualification of Flottman | 2023-Ohio-3239 | Supreme Court of Ohio | 08/01/2023 In divorce action in which affiant-defendant filed an affidavit of disqualification, R.C. 2701.03, after judge had scheduled custody-evaluation interviews, affiant's emergency motion to stay the underlying action is denied as moot since the filing of an affidavit of disqualification deprives only the judge of authority to preside in the case during the affidavit's pendency, but R.C. 2701.03(D) does not automatically "stay" all other activity or deadlines in the underlying case.

Professional Responsibility

Suspension/Dissent. Columbus Bar Assn. v. Bulson | 2023-Ohio-4258 | Supreme Court of Ohio | 11/30/2023 Attorney is suspended from the practice of law for 18 months, with 12 months stayed on conditions; there is a dissenting opinion in this case.

Suspension. Disciplinary Counsel v. Blakeslee | 2023-Ohio-4202 | Supreme Court of Ohio | 11/29/2023 Attorney is suspended from the practice of law for one year, with six months stayed on condition.

Suspension/Dissent. Disciplinary Counsel v. Hunter | 2023-Ohio-4168 | Supreme Court of Ohio | 11/21/2023 Attorney is indefinitely suspended from the practice of law, with credit for the time she served under interim suspension, and with eligibility to petition for reinstatement; there is a dissenting opinion in this case.

Application. In re Application of Cline | 2023-Ohio-4169 | Supreme Court of Ohio | 11/21/2023 Applicant's application to register as a candidate for admission to the Ohio Bar and to take the Bar exam is disapproved, and applicant is permitted to reapply to take the Ohio Bar exam after a specified date.

Resignation. In re Resignation of Brueggeman | 2023-Ohio-4151 | Supreme Court of Ohio | 11/17/2023 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Buttars | 2023-Ohio-4153 | Supreme Court of Ohio | 11/17/2023 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Cox | 2023-Ohio-4152 | Supreme Court of Ohio | 11/17/2023 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Reinier | 2023-Ohio-4155 | Supreme Court of Ohio | 11/17/2023 Attorney resigned from the practice of law with disciplinary action pending.

Unauthorized practice of law/Default. Cleveland Metro. Bar Assn. v. Carson | 2023-Ohio-4036 | Supreme Court of Ohio | 11/09/2023 In relator's complaint alleging that respondent engaged in the unauthorized practice of law where respondent has failed to answer the complaint or to respond to a motion for default, respondent is found to have engaged in the unauthorized practice of law by holding himself out as an attorney in affidavits confirming the service of four subpoenas in his cousin's legal matter, R.C. 4705.07(A)(1) and (2), and respondent is enjoined from engaging in further acts constituting the unauthorized practice of law and is issued a civil penalty; Gov.Bar R. VII(12)(B)(2) requires a relator to submit "[s]worn or certified documentary prima facie evidence" to support the allegations of the complaint in a motion for default judgment in an unauthorized-practice-of-law proceeding.

Suspension. Disciplinary Counsel v. Carter | 2023-Ohio-3992 | Supreme Court of Ohio | 11/07/2023 Attorney is suspended from the practice of law for two years, with one year stayed on condition.

Reinstatement. Lorain Cty. Bar Assn. v. Vagotis | 2023-Ohio-3938 | Supreme Court of Ohio | 10/31/2023 Attorney is reinstated to the practice of law.

Resignation. In re Resignation of O'Brien | 2023-Ohio-3922 | Supreme Court of Ohio | 10/30/2023 Attorney resigned from the practice of law with disciplinary action pending.

Reinstatement. In re Bridgeforth | 2023-Ohio-3866 | Supreme Court of Ohio | 10/26/2023 Attorney is reinstated to the practice of law after fulfilling all continuing legal education requirements.

Suspension. Disciplinary Counsel v. Crossin | 2023-Ohio-3867 | Supreme Court of Ohio | 10/26/2023 Attorney is suspended from the practice of law for a period of 30 days, with reinstatement in Ohio when attorney is reinstated to the practice of law before a specific federal court and two specific federal administrative agencies.

Reinstatement. Disciplinary Counsel v. Smith | 2023-Ohio-3802 | Supreme Court of Ohio | 10/20/2023 Attorney is reinstated to the practice of law.

Suspension/Dissent. Disciplinary Counsel v. Scribner | 2023-Ohio-4017 | Supreme Court of Ohio | 10/11/2023 Attorney is suspended from the practice of law for two years, with 18 months stayed on the condition that he commit no further misconduct; there is a dissenting opinion in this case.

Suspension. Disciplinary Counsel v. Shaaban | 2023-Ohio-3671 | Supreme Court of Ohio | 10/11/2023 Attorney is suspended from the practice of law for two years, with one year stayed on condition.

Application for admission. In re Application of Johns | 2023-Ohio-3679 | Supreme Court of Ohio | 10/11/2023 Applicant's pending application for admission to the practice of law is disapproved, but applicant is permitted to reapply for admission.

Application for admission. In re Application of Lu | 2023-Ohio-3684 | Supreme Court of Ohio | 10/11/2023 Applicant's pending application for admission to the practice of law is disapproved, but applicant is permitted to reapply for admission.

Reinstatement. Disciplinary Counsel v. Jancura | 2023-Ohio-3618 | Supreme Court of Ohio | 10/05/2023 Attorney is reinstated to the practice of law.

Reinstatement. Stark Cty. Bar Assn. v. Arkow | 2023-Ohio-3500 | Supreme Court of Ohio | 09/29/2023 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. McCloskey | 2023-Ohio-3447 | Supreme Court of Ohio | 09/28/2023 Attorney is suspended from the practice of law for one year, with the suspension stayed in its entirety, on condition.

Suspension. Disciplinary Counsel v. Daniell | 2023-Ohio-3383 | Supreme Court of Ohio | 09/26/2023 Attorney is suspended from the practice of law for two years, with 18 months stayed on conditions.

Suspension. In re Riley | 2023-Ohio-3267 | Supreme Court of Ohio | 09/15/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Romer | 2023-Ohio-3099 | Supreme Court of Ohio | 09/06/2023 Attorney is indefinitely suspended from the practice of law, with no credit for the time served under his interim suspension.

Suspension. Cleveland Metro. Bar Assn. v. Brooks | 2023-Ohio-3093 | Supreme Court of Ohio | 09/05/2023 Attorney is issued an interim default suspension from the practice of law, with reinstatement on conditions.

Suspension/Dissent. Disciplinary Counsel v. Nowicki | 2023-Ohio-3079 | Supreme Court of Ohio | 09/05/2023 Attorney is suspended from the practice of law for one year, with the entire suspension stayed on conditions; also, there is a dissenting opinion in this case.

Suspension. Disciplinary Counsel v. Andrews | 2023-Ohio-3047 | Supreme Court of Ohio | 08/31/2023 Attorney is issued an interim default suspension from the practice of law, with reinstatement on conditions.

Reinstatement. Cleveland Metro. Bar Assn. v. Gottehrer | 2023-Ohio-2932 | Supreme Court of Ohio | 08/22/2023 Attorney is reinstated to the practice of law.

Public records/Prison kite/Statutory damages. State ex rel. Clark v. Dept. of Rehab. & Corr. | 2023-Ohio-4183 | Supreme Court of Ohio | 11/22/2023 Public records requester's petition for a writ of mandamus to order department to produce a printed copy of a kite which requester had exchanged with prison cashier is granted where kites qualify as public records subject to disclosure under R.C. 149.43, Mobley, and even though Mobley was decided after the instant records request was made, Mobley determined the meaning of the statute, which was in effect at the time of the request; statutory damages are denied since Mobley had not yet been decided, and prior to Mobley a well-informed person responsible for the department's records would reasonably have believed that the requested kite did not need to be disclosed under R.C. 149.43(B).

Public records/Quasi-agency doctrine. Geauga Cty. Prosecutor's Office v. Munson Fire Dept. | 2023-Ohio-3958 | Court of Claims | 10/17/2023 In requester-prosecutor's office's action seeking to compel respondent-fire

department, which is a non-profit corporation contractor, to produce unredacted copies of requested records or to explain the basis for redactions, a writ of mandamus is granted where respondent is the functional equivalent of a public office because it performs a governmental function and receives public funding, and the quasi-agency doctrine applies to allow access to records in respondent's possession which are related to a delegated public function, R.C. 149.43(B).

Public records/Existence. State ex rel. Barr v. Wesson | 2023-Ohio-3645 | Supreme Court of Ohio | 10/10/2023 In inmate's action to compel warden to produce three records where warden asserts that he provided one of the records before the action was filed and that the remaining two requested records did not exist, but inmate claims that one of those records, an electronic kite, did exist, and there is evidence of its existence, a limited writ of mandamus is issued ordering warden to provide a copy of the kite or to show cause why the record cannot be produced; also, inmate's motion to strike warden's evidence is denied since inmate's argument goes to the weight of the evidence, not to its admissibility, and the issue of a statutory-damages award to inmate is deferred until warden has complied with the limited writ, R.C. 149.43(B).

Open Meetings Act/Political party. Ames v. Geauga Cty. Republican Cent. Commt. | 2023-Ohio-3689 | 11th Appellate District | 10/10/2023 Dismissal under Civ.R. 12(B)(6) of plaintiff's action against political party committee in which plaintiff asserted a violation of the Open Meetings Act (OMA), R.C. 121.22, is affirmed since political parties are not governmental entities, and members of a political party's county central and executive committees are generally not considered public officials, so the OMA does not apply to their meetings.

Public records/Denial/Evidence/Damages. State ex rel. Howard v. Watson | 2023-Ohio-3399 | Supreme Court of Ohio | 09/27/2023 Former inmate-public records requester's petition for a writ of mandamus is granted regarding three specific record items in one of inmate's requests, including (a) camera footage or photos for which respondents failed to cite any statutory support for their claim that the records were protected from disclosure, (b) a theft loss report for which request could be made even though requester may have obtained a copy more than a year earlier, and (c) a witness statement for which respondents provide no evidence to support claim of exemption as confidential law enforcement investigatory records, R.C. 149.43(A)(1)(h); as well, requester is awarded maximum statutory damages for respondents' failure to provide the records in the one request and for delays in responding to two other requests, R.C. 149.43(C)(2).

Public records/Overbroad/Search terms/Damages/Attorney fees. State ex rel. Cleveland Assn. of Rescue Emps. v. Cleveland | 2023-Ohio-3112 | Supreme Court of Ohio | 09/07/2023 In union's action seeking to compel city to release certain city employees' emails related to a data breach, court of appeals did not err in granting summary judgment to union since there is no legal basis to support city's position that the union's public records requests were overbroad as a matter of law because they lacked search terms, and R.C. 149.43(B) does not authorize a public office to automatically deny a public-records request when search terms have not been provided, although city later produced the records; as well, the court of appeals did not err in awarding union statutory damages where city merely argued generally that it met its obligation under the Public Records Act, and the court did not err in awarding costs when the court found that requester was entitled to a writ of mandamus, R.C. 149.43(C), but the court did err in awarding attorney fees since city's refusal to accept certified mail service of the complaint is not a basis to award attorney fees under R.C. 149.43(C).

Public records/Pseudonym. Doe v. Ohio State Univ. | 2023-Ohio-3620 | Court of Claims | 09/06/2023 In public records request case in which requester is engaged in the business of purchasing tickets to sporting events for resale and made several requests of state university in furtherance of that business, requester's motion for leave to proceed under a pseudonym is granted since the Civ.R. 10(A) requirement that a party initiating litigation disclose name and address is inapplicable to this proceeding as it would deprive requester of a statutory right, R.C. 2743.75, and is inconsistent with legislative intent; requester's motion to file a redacted affidavit to conceal his identity is denied based on his cursory assertions about retaliation.

Public records/Prison kite-logs/Emails/Information. State ex rel. Barr v. Wesson | 2023-Ohio-3028 | Supreme Court of Ohio | 08/31/2023 Public records requester's petition for a writ of mandamus to compel institutional public information officer to provide records is granted in part for prison-kite logs, recognized as public records subject to disclosure under R.C. 149.43, since they document operations and activities of the institution's communications with inmates, and request for specified email messages between prison personnel, if they exist, is also granted; however, request for a list of cross-gender employees is denied since it is a request for information to be compiled and summarized in a newly created document and is therefore improper, and requester's motion to strike institutional public information officer's affidavit is also denied since requester has not challenged officer's personal knowledge of the events he describes.

City project/Bidding/Charter. ParkPlay Solutions, L.L.C. v. Avon Lake | 2023-Ohio-3103 | 9th Appellate District | 08/28/2023 In playground designer's action against city-charter municipality, alleging violation of state competitive bidding requirements in selecting a designer for the project, trial court erred in finding that city was not authorized to use its competitive design procurement method where city's charter allowed for the expenditure of funds exceeding the amount provided for in R.C. 153.65 for personal services, without public bidding, and the bidding process used was a proper exercise of home rule power under city's charter.

Nuisance abatement/Junk vehicle. Salem Twp. Bd. of Trustees v. Fazekas | 2023-Ohio-2984 | 7th Appellate District | 08/24/2023 In township's action against homeowners, seeking an injunction ordering removal of junk on property and abatement of a nuisance, judgment in favor of township was not error where, although defendants' bus was not listed as a junk motor vehicle on the notice served to owners under R.C. 505.871, the bus could constitute refuse or debris in the nuisance part of the action, and evidence showed that vehicles listed in the action were appropriately considered junk motor vehicles under R.C. 505.173.

Firearms legislation/Constitutionality/Injunction/Imminent injury. Columbus v. State | 2023-Ohio-2858 | 10th Appellate District | 08/15/2023 In city's action against state seeking an

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injunction against the original and amended firearms-uniformity law, R.C. 9.68, and requesting a declaration that both versions of R.C. 9.68 are unconstitutional, trial court erred in issuing the preliminary injunction regarding the original version since the court failed to make any of the necessary findings to support issuance of an injunction, Civ.R. 65(D), and regarding amended R.C. 9.68, inter alia, the court failed to make any findings on the city's likelihood of success on the merits of its home rule arguments or its separation of powers challenge, leading to the conclusion that, for purposes of the instant case, the preliminary injunction is impermissibly overbroad; also, there was no evidence that the city would suffer imminent and irreparable injury if the trial court did not temporarily enjoin the state from enforcing a statute that had, at that point, been in effect for almost four years.

Public records/Nonprofit organization/Contractor. Lerussi v. Calcutta Volunteer Fire Dept. | 2023-Ohio-3092 | Court of Claims | 08/08/2023 In public records request case, special master's report recommends that respondent-nonprofit corporation contracting with township and receiving public and private funds should be required to provide requester records consisting of cancelled checks and that requester should recover her filing fee and costs, exclusive of attorney fees, where R.C. 149.431(A)(3) establishes two requirements for exempting records from disclosure, one being that the nonprofit received both public and private funds in fulfillment of a contract and the other that the putatively exempted records pertain to private funds expended in relation to the performance of the contract, and the respondent has not proven either requirement.

City council/Removal of member/City charter. Smith v. Nelsonville | 2023-Ohio-2844 | 4th Appellate District | 08/07/2023 In former city council member's appeal of his removal by city council from elected seat on the council for failure to remain continuously a city resident, trial court did not err in reversing council's decision where it failed to comply with the proper procedure pursuant to city charter, which required passing of an ordinance or resolution to appoint a special prosecutor to prosecute council member's removal, and council member's removal was therefore a nullity.

Public records/Public office/Attorney fees/Statutory damages. State ex rel. Fair Housing Opportunities of Northwest Ohio v. Ohio Fair Plan | 2023-Ohio-2667 | Supreme Court of Ohio | 08/03/2023 In public records mandamus action, court of appeals' judgment granting petition to compel respondent to provide the requested records is affirmed since the court properly determined that respondent is a "public office" subject to the Public Records Act where respondent and its board of governors, and its purpose, operation, and regulation thereof, were specifically established in R.C. 3929.41 through 3929.49, which reflect the legislative intent that respondent be considered a public office; as well, the court of appeals' denial of statutory damages and attorney fees is affirmed where respondent promptly responded to the request, respondent's public-office status was a matter of first impression, and a well-informed public office would have reasonably believed that R.C. 149.43(B) did not require disclosure of the requested records and that withholding the records would serve the public policy underlying the authority that is asserted for withholding the records.

Public records/Attorney fee invoices/Privilege/Denial. State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews | 2023-Ohio-2668 | Supreme Court of Ohio | 08/03/2023 In public records requester's mandamus action seeking to compel respondents-attorneys to provide unredacted attorney fees invoices to government entities, the court of appeals properly determined that the redacted information was protected by the attorney-client privilege where in camera inspection demonstrated that the redactions extended no further than the narrative portions of each invoice, which described the rendition of legal services; however, the court of appeals erred in going outside the documents attached to requester's complaint and in granting respondents' Civ.R. 12(B)(6) motions to dismiss based on the documents the court reviewed in camera, so the instant court modifies the judgment of the court of appeals and enters judgment denying the petition as if it had been originally filed in the instant court.

Public Utilities

Capital expenditure/Cost recovery/Rate of return. In re Application of E. Ohio Gas Co. | 2023-Ohio-3289 | Supreme Court of Ohio | 09/20/2023 In energy company's application to recover the costs of its capital-expenditure program, which was approved by the Public Utilities Commission, by establishing a Capital Expenditure Program (CEP) Rider, requesting approval of an alternative rate plan, R.C. 4929.05(A), commission's approval of energy company's proposed 9.91 percent rate of return for the CEP Rider is affirmed based on its practice of applying the rate of return approved in a utility's most recent base-rate case to the utility's later alternative rate plan and rider proceedings; as well, the commission ordered the energy company to file a new base-rate case in the current calendar year.

Real Property

Eviction/Co-owner lessor. Anthony v. Groves | 2023-Ohio-4076 | 9th Appellate District | 11/13/2023 In property owners' forcible entry and detainer and unjust enrichment action against tenants for occupying property without their consent, trial court did not err in granting tenants' Civ.R. 12(B)(6) motion to dismiss where tenants had possession of the property through an agreement with owners' co-owner, who had the legal right to convey the lease without owners' authorization, and any cause of action for owners to recover their fair share of any rental income is against the co-owner, rather than against tenants.

Eviction/Federal Act/Covered dwelling unit. Olentangy Commons Owner, L.L.C. v. Fawley | 2023-Ohio-4039 | 10th Appellate District | 11/07/2023 In landlord's forcible entry and detainer action against tenant for failure to pay rent, trial court erred in granting restitution of the premises to landlord where the court did not determine whether the premises qualified as a "covered dwelling unit" under the pandemic-related CARES Act, triggering landlord's obligation to provide a 30-day notice to tenant to vacate, 15 U.S.C. 9058(c)(1); even though tenant's appeal became moot when she vacated the premises, the issue in this case will recur frequently, and therefore the exception to the mootness doctrine for cases of great public or general interest applies.

Adverse possession/Agreed entries/ Contempt/Sanctions. Beavers v. Lors | 2023-Ohio-3940 | 11th Appellate District | 10/30/2023 In plaintiffs-property owners' action seeking a declaratory judgment to quiet title to a portion of defendant-neighbor's property, allegedly acquired through adverse possession, where agreed orders were issued as to the property dispute and as to no-contact between the parties, followed by plaintiff's motion to show cause asserting that defendant violated the orders and should be held in contempt, trial court did not err in finding defendant in indirect contempt for failure to abide by the terms of the agreed orders since notice of hearing was sent to defendant's original counsel and directly to defendant, and contempt sanctions were appropriately imposed even though sanctions exceeded the amount of damages specified in the mutual no-contact order, R.C. 2705.05(A).

Foreclosure/Liens. Weese v. Dalton | 2023-Ohio-3905 | 5th Appellate District | 10/26/2023 In plaintiff-unsecured judgment creditor's action seeking foreclosure on a judgment lien against defendant-deceased homeowner's wife and against another holder of a judgment against estate from an unrelated case, trial court erred in granting summary judgment to wife on reasoning that plaintiff's claim was barred by res judicata and lis pendens, stemming from the unrelated case, where neither issue preclusion nor claim preclusion nor lis pendens bars plaintiff from seeking satisfaction of his lien, and because the trial court affirmatively did not rule on whether defendant was entitled to claim the homestead exemption, that issue was not reviewed on appeal.

Appropriation/Standing/Statutory authority. State ex rel. Boggs v. Cleveland | 2023-Ohio-3871 | 8th Appellate District | 10/26/2023 In property owners' mandamus action to compel city to commence appropriation proceedings of owners' real property located near airport outside city's borders, where owners seek a declaration regarding city's power to take real property outside its borders, trial court did not err in granting summary judgment to city where owners lacked standing to compel city to begin appropriation proceedings for property outside its borders, there is no constitutional provision giving city the power of eminent domain beyond its geographical limits, and appropriation of property under R.C. 719.02, which allows municipalities to acquire property outside its limits, when reasonably necessary, for the specific purposes in R.C. 719.01 does not apply.

Eviction/Counterclaims/Dismissal/ Notice. Vinebrook Homes, L.L.C. v. Perkins | 2023-Ohio-3721 | 1st Appellate District | 10/13/2023 In property manager's eviction action against tenants, seeking damages for unpaid rent and fees, trial court erred in effectively dismissing with prejudice tenants' counterclaims as a consequence of tenants' failure to appear for trial where tenants were not provided actual or implied notice of court's intent to involuntarily dismiss their counterclaims, as required by Civ.R. 41(B)(1), and tenants were owed the opportunity to explain their failure to appear at trial prior to involuntary dismissal of their counterclaims.

Partition/Default judgment/Forfeiture. Piros v. Teague | 2023-Ohio-3730 | 2nd Appellate District | 10/13/2023 In plaintiff-sister's action against defendant-sister, seeking partition of property they inherited upon the death of their mother, where defendant failed to answer or otherwise plead and trial court issued a default judgment, the court erred in awarding the property to plaintiff where, although default judgment was appropriate, it did not cause forfeiture of defendant's interest in property and should have just triggered partition, and court was required to make initial findings as to parties' interests as tenants in common pursuant to R.C. Ch. 5307.

Reversion/Conditions/Dissent. Perry Cty. Bd. of Commrs. v. Hocking Technical College | 2023-Ohio-3439 | 5th Appellate District | 09/26/2023 In county board of commissioners' action against college, seeking to quiet title and for reversion of unused property previously deeded to college, trial court did not err in granting college's motion to dismiss where reverter clause in deed required only that college commence construction within a set time, and because college complied with all conditions, it was not required to use all of the conveyed land or to return any unoccupied portion, Civ.R. 12(B)(6); there is a dissenting opinion in this case.

Land contract/Forfeiture/Calculation. Sood v. Rivers | 2023-Ohio-3417 | 11th Appellate District | 09/25/2023 In vendors' action against vendees for breach of land installment contract, asserting entitlement to forfeiture and restitution, R.C. 5313.08, trial court erred in determining that vendees had not paid 20% of the principal owed on the land contract, in terminating a stay of execution of writ of restitution, and in ordering eviction to proceed, where there were no factual findings as to magistrate's calculation of paid principal and whether additional payment applied under the terms of the contract, and trial court was silent as to issues raised by vendees and failed to address vendees' objections to magistrate's calculations.

Appropriation/Necessity/Amended answer. Mill Creek Metro. Park Dist. Bd. of Commrs. v. Hough | 2023-Ohio-3426 | 7th Appellate District | 09/25/2023 In plaintiff-park district board of commissioners' action seeking to appropriate defendant's property for creation of bikeway trail, trial court erred in failing to set the matter for a necessity hearing prior to submitting the case to the jury on the issue of compensation or before rendering final judgment where, even though defendant's initial answer failed to challenge plaintiff's right to appropriate property, which waived the question of necessity, the court granted defendant's Civ.R. 15 motion to amend his answer, permitting defendant to challenge plaintiff's authority and/or necessity to appropriate the property, so the court was bound by R.C. 163.09(B)(1) to halt the trial and set the matter for hearing on the issue of necessity.

Zoning/Conditional use/Commercial. Turner v. Bexley Bd. of Zoning & Planning | 2023-Ohio-3225 | 10th Appellate District | 09/12/2023 In property owner's challenge to decision of board of zoning appeals that approved a conditional use permit for development of a building with dwelling units in a neighboring commercial district, trial court did not err in reversing the board's approval of the application where a city ordinance prohibits multifamily dwellings in city's commercial district, and although the ordinance conditionally allows for dwelling units on the first floor and dwelling units above the first floor as long as the building has some commercial use, the proposed building was for a multifamily dwelling only.

Eviction/Mandamus/Procedendo. State ex rel. Cleveland 2, L.L.C. v. Scott | 2023-Ohio-3066 | 8th Appellate District | 08/25/2023 In relator-landlord's action seeking to compel respondents-judge and magistrate to issue a decision in underlying forcible entry and detainer case, writs of mandamus and procedendo are

granted as to all pending forcible entry and detainer cases in the trial court where, in response to instant court's alternative writ ordering respondents to proceed to judgment forthwith, judge delayed the case further by remanding it to magistrate for relator to produce additional evidence, and even though the underlying case proceeded to judgment, there is evidence of a pattern of delay in such actions, warranting issuance of writs.

Purchase option/Evidence. Loch v. Myers | 2023-Ohio-2981 | 6th Appellate District | 08/25/2023 After foreclosure and sheriff's sale of plaintiff's property, acquired by defendants-neighbors, followed by parties' agreement with a lease/purchase option, leading to a dispute and verdict for defendants that plaintiff did not properly exercise his option because he did not adequately identify the portion of property he wanted to purchase, trial court did not err in admitting evidence of plaintiff's conduct during the earlier foreclosure proceedings since that evidence was relevant regarding plaintiff's credibility and whether he properly exercised his option, so plaintiff's conduct during the foreclosure proceedings, whereby he utilized legal machinations to extend the time he was allowed to stay on the property, makes it less probable that he properly exercised the option and more probable that he was just seeking a delay, Evid.R. 401.

Eviction/Magistrate's decision/ Objections. Edwards v. Jenkins | 2023-Ohio-2952 | 8th Appellate District | 08/24/2023 In landlord's forcible entry and detainer action against tenants for nonpayment of rent, judgment in favor of landlord was error where the court overruled tenants' objections to magistrate's decision prior to obtaining a recording of the proceedings, as requested by tenants, and there was no evidence in the record to undertake a meaningful independent review of objections, Civ.R. 53(D)(4)(d); a forcible entry and detainer action is intended to serve as an expedited mechanism, not every such case requires the trial court to examine additional evidence in independently reviewing the record after objections are filed, and to the extent that it is necessary, trial courts have discretion to make this determination on a case-by-case basis.

Lease/Default/Mitigation of damages. Apple Ohio, L.L.C. v. Rose Italian Kitchen Solon, L.L.C. | 2023-Ohio-2880 | 8th Appellate District | 08/17/2023 In plaintiff-landlord's breach of contract action against defendant-commercial sublessee tenant for default on payments due under the parties' agreement, trial court erred in granting summary judgment to plaintiff on the issue of mitigation of damages since, construing the sublease contract in accordance with the applicable state law, plaintiff was required to use reasonable efforts to mitigate damages related to the tenant's default, and the question remains as to whether plaintiff used reasonable efforts to mitigate damages; also, while the parties' agreement stated that the landlord was not obligated to relet the premises, it further stated that the landlord must follow the law.

Lease/Purchase option/Specific performance. Sunbury Diner, L.L.C. v. Young | 2023-Ohio-2821 | 5th Appellate District | 08/14/2023 In action by tenant for specific performance of lease provision to purchase the subject property, trial court did not err in ordering landlord's estate to sell the property to tenant where the court found that renewal of the lease was automatic upon the start of the renewal term after tenant paid the increased rental rate and remained in possession of the property, tenant provided notice to landlord of tenant's intention to exercise its option to purchase the property for the highest purchase price contemplated in the parties' lease, and the property was a unique parcel of real property.

Purchase/Defects/Summary judgment/ Reconsideration. Kess v. Khan | 2023-Ohio-2773 | 8th Appellate District | 08/10/2023 In home buyer's fraud and related claims action against sellers, trial court did not err in granting sellers' motion for summary judgment after initially denying the motion, and then reconsidering its denial, since an order denying a motion for summary judgment is interlocutory, and until a final judgment is entered, a trial court may reconsider and modify it, and sellers provided new evidence of buyer's two receipts of repairs, which demonstrated that the defects and issues buyer complained of were fully disclosed to buyer by his own professional inspector before the completion of the sale of the property; as well, merely because the receipts were provided in anticipation of a "settlement conference" does not mean that they fell under the protection of Evid.R. 408, especially when the documentation was discoverable or was necessary to prove a party's claim.

Zoning/Vagueness/Fair notice/ Due process. Compass Homes, Inc. v. Upper Arlington Bd. of Zoning | 2023-Ohio-2744 | 10th Appellate District | 08/08/2023 Affirming board of zoning appeals' denial of home builder's application seeking to split a parcel into two lots is reversed where the board denied the application on reasoning that the proposed design would not be consistent and compatible with characteristics of the existing neighborhood, as required by local ordinance, but the ordinance was void for vagueness since its terms were undefined and could not be applied to a neighborhood with lots of diversity in size and shape, and the ordinance did not provide fair notice of what a proposed lot must look like to be deemed consistent and compatible with the neighborhood characteristics, in order to comport with due process.

Taxation

Real property/Appeal/Amendment. Lancaster City School Dist. Bd. of Edn. v. Fairfield Cty. Bd. of Revision | 2023-Ohio-3985 | 5th Appellate District | 11/02/2023 In real property tax valuation dispute where board of education (BOE) appealed the board of revision's (BOR) valuation to the board of tax appeals (BTA), the BTA erred in dismissing the appeal where, although appeal was filed after the effective date of amendment to R.C. 5717.01, which precluded a BOE from appealing a BOR's decision on the valuation of property that the BOE did not own or lease, the original complaint was filed under the prior version of the statute, without limiting language, and the prospective application of the amendment is presumed, pursuant to R.C. 1.48.

Real property/Appeal/Amendment. Olentangy Local School Dist. Bd. of Edn. v. Delaware Cty. Bd. of Revision | 2023-Ohio-3984 | 5th Appellate District | 11/02/2023 In board of education's (BOE) action requesting the board of revision (BOR) to increase tax values assigned to property where the BOR increased the value and later "corrected" that decision to reduce the increased value, prompting the BOE to appeal both decisions to the board of tax appeals (BTA), the BTA erred in dismissing the appeals where the amended version of R.C. 5717.01 precluded filing appeals involving property the BOE did not own or lease, but the original complaints were

filed prior to the effective date of the amended statute, the limiting language did not apply to previously filed cases, and the prospective application of the amendment must be presumed, R.C. 1.48.

Debts/Payment/Fraud/Unjust enrichment. Johnson v. Ohio Dept. of Taxation | 2023-Ohio-4139 | Court of Claims | 10/27/2023 In plaintiff's fraud and unjust enrichment action against defendant-department of taxation for allegedly transferring a portion of profits from sale of plaintiff's inherited property to satisfy her husband's tax debts, summary judgment is granted in favor of defendant where defendant responded to a form from title agency signed by husband authorizing the release of itemized debts owed by him, but the affidavit of a representative of the attorney general's office stated that defendant has no record of receiving any funds from plaintiff or the title agency, and the affidavit is sufficient to establish that no funds were received by defendant, Civ.R. 56(E).

Real property/Appeal/Amended statutes. New Albany-Plain Local Schools Bd of Edn. v. Franklin Cty. Bd. of Revision | 2023-Ohio-3806 | 10th Appellate District | 10/19/2023 In boards of education's (BOE) appeal of decisions by one county's board of revision (BOR) concerning valuation of properties located within the school districts, the board of tax appeals (BTA) erred in dismissing the claims for lack of jurisdiction, on reasoning that H.B. 126, amending R.C. 5715.19 and 5717.01, prohibits a BOE from appealing a BOR's decision regarding the valuation of property the BOE does not own or lease, because the BOE's appeals were filed prior to the effective date of legislation amending the statutes, and the general rule under R.C. 5717.01 entitled BOE's to appeal BOR's decisions.

Sales and use/Exemption/Production of oil and gas. Stingray Pressure Pumping, L.L.C. v. Harris | 2023-Ohio-2598 | Supreme Court of Ohio | 08/02/2023 In taxpayer's challenge to imposition of sales and use tax on purchases of equipment used in taxpayer's fracking operations, the Board of Tax Appeals (BTA) erred in declining to grant exemption under the new R.C. 5739.02(B)(42)(q) for all but one of the transactions where the instant court analyzed each of the pieces of equipment purchased by taxpayer and found that all but one are used directly in the production of oil and gas and fall within the category "thing transferred" listed in the new statute; however, the BTA did not err in denying exemption for purchase of taxpayer's data van since the van is a motor vehicle and fits squarely within the new statute's enumeration of items that are not "thing[s] transferred."

Torts

Legal malpractice/Conflicting evidence/Mineral interest. Hutchins v. McCamic | 2023-Ohio-4174 | 7th Appellate District | 11/29/2023 In plaintiff's legal malpractice action against defendant-attorney, claiming that attorney failed to protect her inherited mineral interest in property, summary judgment in favor of defendant was error where there was conflicting evidence whether plaintiff hired defendant to preserve her mineral interest or to simply negotiate a lease for the mineral interest she believed she owned, and if defendant was hired to preserve the mineral interest, the question remains whether defendant breached the standard of care, given the changing state of the law at the time.

Medical malpractice/Pre-judgment interest/Withdrawn motions. Potts v. Durrani | 2023-Ohio-4195 | 1st Appellate District | 11/22/2023 In plaintiff's action against defendants-physician and clinic alleging, inter alia, medical negligence for injury and complications from surgery, trial court erred in granting plaintiff's motions for pre-judgment interest and court costs where plaintiff previously withdrew her motions, the case was appealed, the appeal was dismissed, and the trial court did not then have authority to reinstate plaintiff's motions, even though the order was not yet final; intervening Nichols opinion held that the time to appeal did not begin to run until the court issued an order disposing of post-judgment motions, App.R. 4(B)(2).

Legal malpractice/Case-within-a-case. Resor v. Dicke | 2023-Ohio-4087 | 3rd Appellate District | 11/13/2023 In plaintiffs' legal malpractice action against defendant-lawyer and firm, claiming professional negligence in representation in custody action which led to removal of plaintiff's children, trial court erred in granting defendants' motion to dismiss where the case-within-a-case doctrine applied because the outcome of custody proceedings would allegedly have been more favorable to plaintiffs if the lawyer had not breached her duty, plaintiffs were not required to prove their claim at the pleading stage, and some speculation is inherent in a claim involving the case-within-a-case doctrine.

Legal malpractice/Settlement disclosure. Roush v. Blazek | 2023-Ohio-3917 | 5th Appellate District | 10/27/2023 In client's legal malpractice action against attorney for breach of the standard of care in underlying case, summary judgment in favor of attorney was error where evidence shows that attorney failed to disclose a settlement offer to client, which was a breach of duty, even if client would not have accepted the offer, and the questions remain whether attorney breached his duty prior to termination of his representation of client and whether any breach was the proximate cause of damages.

Wrongful death/Student/College campus. Meola v. Ohio State Univ. | 2023-Ohio-3805 | 10th Appellate District | 10/19/2023 In estate administrator's wrongful death and survivor action against university, alleging failure to police the off-campus area where student's death took place and failure to warn or to protect the student from criminal act of a third-party, trial court did not err in granting university's Civ.R. 12(B)(6) motion to dismiss where university had responsibility for safety of students on campus, R.C. 737.06, but the off-campus fraternity house where student was killed was not part of the campus or owned by the university, and therefore the university did not have a duty to warn or to protect against acts of third-party.

Immunity/Dismissal/Exceptions. Lewis v. Ayersville Local School Dist. | 2023-Ohio-3685 | 3rd Appellate District | 10/10/2023 In student's family's negligence action against school district and track coach after student was hit in the head by a shot thrown by another athlete during a shotput warm-up directed by coach, who was absent at the time of the incident, trial court did not err in granting school district's governmental immunity-based Civ.R. 12(B)(6) motion to dismiss since family's claimed "physical defect" exception to immunity in R.C. 2744.02(B)(4) is without merit where there are no factual allegations to support a claim that some aspect of the school premises was physically defective, to qualify for the exception; however, the trial court erred in granting the motion to dismiss in favor of coach since the complaint sufficiently alleged that the coach's acts or omissions were willful, wanton or reckless, to qualify for an exception to immunity.

Slip and fall. Hicks v. Cleveland Museum of Art | 2023-Ohio-3633 | 8th Appellate District | 10/05/2023 In business invitee's slip and fall negligence action against museum for injuries sustained when she fell into planter box, summary judgment in favor of museum was not error where the position of the planter box, next to walkway, was open and obvious and observable to invitee if she had looked, and museum had no duty to warn of hazard.

Defamation/Frivolous conduct/ Sanctions. Williams v. Natl. Assn. for the Advancement of Colored People | 2023-Ohio-3948 | 10th Appellate District | 10/03/2023 In plaintiffs-former president of civil rights association's local branch and her attorneys' defamation action against defendants-civil rights association and its state president, alleging publication of a false statement in order to harm plaintiff's standing in the association, resulting in a summary judgments for defendants, trial court erred in denying defendants' motion for sanctions and attorney fees where evidence shows that plaintiffs' conduct was frivolous under R.C. 2323.51 because, inter alia, the action was commenced outside the statute of limitations, R.C. 2305.11(A), and a fraudulent email was entered into evidence to remedy that defect in the initial claim.

Negligence/Damages/Jury. Curley v. Wilcox | 2023-Ohio-3507 | 2nd Appellate District | 09/29/2023 In plaintiffs' action seeking compensation for damages related to a traffic accident caused by defendant, the amount of money awarded for economic damages was error where no medical bills were submitted as evidence or testimony presented regarding the amount of medical expenses incurred, the jury improperly relied on closing arguments, which presented evidence not admitted during trial, nominal evidence showed that plaintiff was entitled to at least some economic damages, and economic damages and non-economic damages were intertwined; as well, plaintiff's request to remove prospective jurors for cause because they were insured by the same insurer as the defendant was without merit and was properly denied.

Slip and fall/Ice accumulation. Johnson v. CBRE, Inc. | 2023-Ohio-3518 | 9th Appellate District | 09/29/2023 In plaintiff's slip and fall negligence action against defendants-premises owner and maintenance provider for injuries sustained when plaintiff slipped on ice and fell in parking lot, summary judgment in favor of defendants was not error where defendants had no duty to remove natural accumulations of ice or to warn of danger under the no-duty winter rule, plaintiff failed to show that defendants' actions aggravated the existence of ice in the area, plaintiff was aware of runoff on pavement, and accumulation of ice did not become unnatural just because it traveled from one type of surface to another.

Legal malpractice/Appeal/Expert. Arnoff v. Ferguson | 2023-Ohio-3511 | 9th Appellate District | 09/29/2023 In client's legal malpractice action against attorney, asserting ineffective representation in direct appeal of client's criminal convictions, summary judgment in favor of attorney was not error where client was not represented by attorney when client entered guilty pleas to criminal charges, and client did not submit expert testimony to show that attorney breached her duties or caused client damage, in order to counter evidence submitted by attorney.

Negligence/Notice. Griffin v. Ohio Dept. of Rehab. & Corr. | 2023-Ohio-3716 | Court of Claims | 09/27/2023 In inmate's negligence action alleging that he was injured when the light switch in his cell malfunctioned, summary judgment is granted to state department where it submitted affidavits from two of its employees, one of whom is the building construction superintendent, averring that they did not have notice of any hazard associated with the light switch in inmate's cell before the incident, and inmate's responsive documents, all created after the incident, fail to establish a genuine issue of material fact as to whether state department had notice of the alleged hazard.

Slip and fall/Expert evidence. Gibbs v. Mark Porter Autoplex, Inc. | 2023-Ohio-3460 | 4th Appellate District | 09/25/2023 In business invitee's slip and fall negligence action against car dealership for injuries sustained when she fell on curb in sales lot, summary judgment in favor of dealership was not error where the curb was visible and not concealed from view and there were no attendant circumstances that would render the curb less than open and obvious, so dealership had no duty to business invitee; invitee's argument that the court failed to consider her expert's opinion that the fall was a direct result of the lack of adequate design and construction of the curb is without merit since the court's entry explicitly states that it considered the transcripts of depositions, and invitee did not demonstrate that the court failed to consider the expert's evidence.

Dental malpractice/Affidavit of merit. Johnson v. Erbeck | 2023-Ohio-3402 | 12th Appellate District | 09/25/2023 In patient's action against dentist, claiming that failure to provide requested treatment led to need for more extensive treatment, trial court did not err in granting dentist's motion to dismiss where patient's claim was properly construed as dental malpractice because patient's injury was allegedly caused by dentist's omission, patient failed to attach an affidavit of merit to complaint, as required by Civ.R. 10(D)(2)(a), and the common knowledge exception to the requirement for an affidavit did not apply because questions about dentistry are not within the common knowledge of jurors.

Medical malpractice/Expert witness/ Outcome. Patterson v. Omni Orthopaedics, Inc. | 2023-Ohio-3416 | 5th Appellate District | 09/25/2023 In plaintiff's medical malpractice action against defendant-physician, claiming injuries sustained during surgery, summary judgment in favor of defendant was not error where plaintiff's expert's report did not identify any specific act of defendant that fell below the standard of care, plaintiff's injury was a known risk of surgery that could happen without medical negligence, and although the expert opined that the injury was due to defendant's negligence, the expert improperly relied on a bad outcome to speculate as to the manner in which defendant breached the standard of care.

Medical malpractice/Statute of Repose. Rankin v. Kirsh | 2023-Ohio-3371 | 1st Appellate District | 09/22/2023 In medical malpractice action in which patient asserts that he was injured by a certain drug prescribed by physician who failed to monitor the drug's effect on him, trial court did not err in dismissing the complaint on the basis of the statute of repose, R.C. 2305.113, even though the statute of limitations had not run, having been extended by the saving statute after plaintiff voluntarily dismissed the initial complaint; once a

cause of action is voluntarily dismissed, the dismissed action is irrelevant to the analysis of when an action is filed for purposes of the statute of repose since the dismissed cause of action is viewed as never having existed, and also the statute of repose begins to run when the alleged malpractice occurred rather than when it was discovered.

Wrongful death/Traffic accident/Joint venture. Howard, Adm. of the Estate of Sean David Howard, Sr. v. Szozda, et al. | 2023-Ohio-3407 | 6th Appellate District | 09/22/2023 In administrator's wrongful death action against partygoers, alleging that they pooled money and designated a driver to purchase drugs, leading to a vehicle accident that caused decedent's death, summary judgment in favor of partygoers who were not in the vehicle at the time of the accident was not error where a joint venture between partygoers was not formed because those who were not in the car had no control over driving and purchasing drugs, and the contribution of money was insufficient to establish community of interest and joint control.

Wrongful imprisonment/Settlement/Death/Dissent. Estate of Jones v. State | 2023-Ohio-3234 | 9th Appellate District | 09/13/2023 In wrongful imprisonment action brought by deceased inmate's estate, seeking to enforce a settlement agreement between inmate and state which declared that inmate had been wrongfully imprisoned, trial court erred in granting state's Civ.R. 60(B) motion to vacate the judgment after inmate died since inmate's claim of wrongful imprisonment did not abate upon his death, pursuant to R.C. 2311.21, and even if the claim had abated, trial court retained authority to enter a judgment reflecting the parties' settlement, and any error could have been raised by state in a direct appeal, rather than in a Civ.R. 60(B) motion; as well, the estate's recourse to enforce the agreement would be a civil action in the Court of Claims, and also there was a dissenting opinion in this case.

Employer/COVID-19 countermeasure/Immunity. Pugh v. Okuley's Pharmacy & Home Med. | 2023-Ohio-3208 | 3rd Appellate District | 09/11/2023 In employee's employer intentional tort action against defendant-pharmacy and related defendants for injuries sustained in explosion in defendants' lab while manufacturing hand sanitizer countermeasure against COVID-19, trial court erred in granting defendants' immunity-based motion to dismiss where immunity under the federal Public Readiness and Emergency Preparedness Act (PREP Act) was designed to prevent lawsuits that would arise from the physical provision of covered countermeasures to the end users (such as the person using hand sanitizer), and there is no indication that the PREP Act intended to preclude liability of manufacturers to its employees who are not being administered or using the covered countermeasure.

Medical malpractice/New trial/Evidence. Nichols v. Durrani | 2023-Ohio-3177 | 1st Appellate District | 09/08/2023 In plaintiff's medical malpractice action against defendants-physician and clinic, alleging deterioration of condition following surgeries, trial court erred in denying defendants' Civ.R. 59 motion for new trial where evidence of physician's license revocations and other lawsuits filed against him was admitted in violation of Evid.R. 403(A) because it did not relate to plaintiff's treatment and contained very little probative value, and error resulting from evidentiary rulings was not harmless because it directly impacted jury's assessment of physician's credibility.

Wrongful death/Drowning/Immunity. Hoskins v. Cleveland | 2023-Ohio-3149 | 8th Appellate District | 09/07/2023 In plaintiff-executor's action against defendants-city and lifeguard, alleging wrongful death of decedent while swimming in city pool, trial court did not err in denying defendant-city's governmental immunity-based motion for summary judgment where, although defendant had general political subdivision immunity while engaging in governmental function pursuant to R.C. 2744.01, the question remains as to whether plaintiff can demonstrate the physical defect exception to immunity, asserting lifeguard's negligent positioning of her folding chair and her inability to observe decedent at the time of the incident, R.C. 2744.02(B)(4).

Negligence/Immunity. Jones v. Soto | 2023-Ohio-3107 | 9th Appellate District | 09/05/2023 In plaintiffs-vehicle passengers' negligence action against defendants-police officers for injuries sustained in a collision between plaintiffs' vehicle and vehicle driven by suspect who lost control of his car as he exited field during defendants' high-speed chase, trial court erred in denying defendants' governmental immunity-based motion for summary judgment where suspect entered field without being chased there by defendants, defendants used lights and sirens to warn that suspect was driving at high rate of speed, and plaintiffs did not rebut the presumption of immunity since they did not show that defendants acted in a wanton or reckless manner, R.C. 2744.03(A)(6).

Medical malpractice/Evidence/Jury instruction. Greene v. Durrani | 2023-Ohio-3069 | 1st Appellate District | 09/01/2023 In plaintiff's medical malpractice and related claims action against defendants-surgeon and clinic, claiming that surgery was defective, resulting in substantial pain, judgment in favor of plaintiff was error where admission of video collage and evidence of revocation of surgeon's license was prejudicial, jury instruction concerning surgeon's absence at trial was broadly worded and allowed the jury to draw impermissible inferences, and errors were not harmless because jury may have reached a different conclusion but for prejudicial evidence.

Negligence. Witcher v. Ohio Dept. of Rehab. & Corr. | 2023-Ohio-3717 | Court of Claims | 09/01/2023 In inmate's negligence action claiming unprovoked use of force, judgment is recommended for state department since the preponderance of evidence showed that the incident inmate described did not occur or did not occur as inmate described where, inter alia, inmate's trial testimony and his incident report were inconsistent, and he did not appear bruised or otherwise injured when he underwent his medical examination.

Negligence/Immunity. Harris v. Hilderbrand | 2023-Ohio-3005 | Supreme Court of Ohio | 08/30/2023 In negligence action arising from injuries to plaintiff when she was attending a social gathering at the home of defendant-county sheriff's deputy and was bitten by defendant's K-9 dog, that was required to be at the home of defendant as a member of the K-9 unit, court of appeals erred in ruling that defendant was entitled to a governmental immunity-based summary judgment under R.C. 2744.03(A)(6) since reasonable minds could differ regarding whether defendant was manifestly acting outside the scope of his employment during the events leading up to plaintiff's injury.

Medical malpractice/Evidence. Stratman v. Durrani | 2023-Ohio-3035 | 1st Appellate District | 08/30/2023 In plaintiff's medical malpractice action against defendants-surgeon and clinic, claiming that surgeon

Torts (Continued)

performed medically unnecessary surgery, judgment pursuant to jury verdicts in favor of plaintiff was error where plaintiff's extensive references to revocation of surgeon's medical licenses and submission of video collage of inadmissible testimony, unrelated to the case, was not harmless error because the evidence was not probative of physician's truthfulness and served to bias jury, and the jury may have reached a different conclusion but for errors at trial.

Negligence/Immunity/Physical defect. Estate of Cook v. Montville Twp. | 2023-Ohio-3002 | 9th Appellate District | 08/28/2023 In estate's negligence and wrongful death action against township for death of decedent from injuries sustained when a tree fell on her vehicle, trial court did not err in denying township's governmental immunity-based motion for summary judgment since R.C. 2744.02(B)(4) provides an exception to governmental immunity when death was caused due to a physical defect on township grounds, and the question remains as to whether the tree was defective and whether it was on the grounds of a building used in connection with performance of a governmental function.

Negligence/Immunity. Landers v. Ohio Dept. of Rehab. & Corr. | 2023-Ohio-2857 | 10th Appellate District | 08/15/2023 In inmate's negligence action, alleging that he sustained serious injuries from excessive use of force by former corrections officers, trial court erred in ruling that one of the officers was entitled to governmental immunity on reasoning that he was a probationary officer and was aiding another officer, who precipitated fight with inmate, where evidence does not support trial court's finding that officer's probationary status removed his actions from the realm of wanton or reckless misconduct, and probationary officer had no duty to protect the other officer who precipitated fight with inmate without provocation and without a factual basis justifying use of force, R.C. 9.86.

Medical malpractice/Evidence/New trial. Mann v. Durrani | 2023-Ohio-2672 | 1st Appellate District | 08/02/2023 In plaintiff-patient's action against defendants-physician and clinic, alleging negligence for breach of the standard of care, resulting in judgment for plaintiff, trial court erred in denying defendants' Civ.R. 59 motion for a new trial where a video collage of physician's deposition testimony should have been excluded under Evid.R. 403(A) and 403(B) because it contained improper discussion about revocation of physician's medical licenses and suspensions of privileges and other irrelevant issues, and the error was not harmless because it was prejudicial to physician's credibility.

Traffic and OVI

Speeding/Sufficiency and weight. State v. Kurtz | 2023-Ohio-3682 | 9th Appellate District | 10/10/2023 Bench conviction of speeding, R.C. 4511.21(D)(1), did not meet the sufficiency and weight of evidence standards since the state failed to establish the speed limit was 55 miles per hour in the area where defendant was stopped, and the undisputed evidence presented at trial showed that there was not a sign denoting the speed limit in the area of highway where the trooper stopped defendant, nor did the state present evidence from which to draw a conclusion as to how the portion of the roadway where defendant was stopped should be classified for the purposes of R.C. 4511.21(D)(1)-(4).

Impaired driving/Penalty enhancement/Double jeopardy. State v. Hall | 2023-Ohio-3235 | 9th Appellate District | 09/13/2023 In a conviction by plea to OVI, defendant's challenge to the trial court's denial of her motion to dismiss the OVI penalty enhancement on the basis of double jeopardy is without merit where defendant failed to provide a persuasive argument regarding how use of a prior case for the sole purpose of proving an element of the current OVI charges violates her protections against double jeopardy since the state is not re-prosecuting the prior case to offend defendant's protections against double jeopardy, but instead the state is using the prior case to prove an element of the current charges, and thus defendant's protections against double jeopardy have not been violated, Echard.

Impaired driving/Suppression. State v. Taylor-Billings | 2023-Ohio-3104 | 9th Appellate District | 09/05/2023 In a prosecution for OVI, drug and weapon offenses, the trial court's grant of motion to suppress was error since trooper had an objectively reasonable suspicion that a traffic violation had occurred to justify the stop where trooper testified that defendant's vehicle's headlights were toggled off and on at night and thus were not "displayed during all of the following times: (1) The time from sunset to sunrise," R.C. 4513.03(A)(1) and 4513.14(A) and, after trooper signaled defendant to stop, he also observed defendant make a marked lanes violation.

Speeding/Suppression. State v. Brown | 2023-Ohio-3017 | 11th Appellate District | 08/28/2023 In a bench conviction of minor misdemeanor speeding, R.C. 4511.21(D)(2), the trial court did not err in denying motion to suppress since, even if the stop of defendant was illegal, it would not be grounds for dismissing the charges or suppressing evidence of the speed at which defendant was traveling since an " 'illegal arrest does not generally require dismissal of criminal charges, although it will require the suppression of evidence seized as a result of the arrest,' " Taylor, and the speed at which defendant was traveling was determined by radar prior to the stop of his vehicle and the issuance of a citation, not a search.

Leaving the scene of an accident/Home Rule Amendment. Rocky River v. Landers | 2023-Ohio-2962 | 8th Appellate District | 08/24/2023 In a prosecution for violating a municipal ordinance prohibiting leaving the scene of an accident, the trial court did not err in holding that the ordinance requiring persons involved in a traffic accident to remain at the scene of an accident they were involved in until police arrived conflicted with R.C. 4549.02(A)(1) under the Home Rule Amendment test since the R.C. 4549.02(A)(1) "permits a motorist involved in an accident to leave after the motorist has shared his information with the others involved," Bryant, and defendant provided the other driver the required statutory information and thus the prosecution of defendant pursuant to the municipal ordinance violated Ohio Const. Art. XVIII, Sec. 3.

Impaired driving/Lifetime driver's license suspension. State v. Bakos | 2023-Ohio-2827 | 11th Appellate District | 08/14/2023 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(d), the trial court's imposition of a lifetime driver's license suspension was error where the parties entered a stipulated sentence for the minimum mandatory penalties to be imposed for a fourth-degree OVI, and the trial court's sentencing judgment entry stated that the sentence was pursuant to the stipulated sentence under R.C. 2953.08(D), but the court failed to impose the stipulated minimum mandatory license suspension penalty of three years, nor did it provide adequate notice that it would not accept a stipulated plea.

Vehicular manslaughter/Sentencing/ Medical marijuana. State v. Bourne | 2023-Ohio-2832 | 11th Appellate District | 08/14/2023 In a conviction by plea to vehicular manslaughter and failure to maintain the right side of the roadway, challenge to sentence provision prohibiting medical marijuana and abstaining from medical marijuana and cannabidiol is without merit since possession of a valid medical marijuana card does not limit a trial court's authority to restrict an offender's marijuana use as a condition of community control because the restriction is reasonably related to defendant's rehabilitation, the crimes he committed and to conduct that remains criminal under Federal law.

Impaired driving/Past medical tests/ Two-issue rule. State v. Lambert | 2023-Ohio-2822 | 5th Appellate District | 08/14/2023 In a conviction of OVI, R.C. 4511.19(A)(1)(a), defendant's claim that the trial court erred by excluding testimony of previous incidents in which she tested positive for alcohol in a medical setting without having consumed alcohol is not determinative since the trial court also found evidence concerning past medical tests to be barred by the hearsay rule, and defendant does not challenge that ruling, and thus under the two-issue rule, a decision which is supported by one or more alternate grounds properly submitted is invulnerable to attack on one issue only.

Suppression/Lack of search warrant. State v. Rogers | 2023-Ohio-2749 | 10th Appellate District | 08/08/2023 In a prosecution for, inter alia, aggravated vehicular assault, R.C. 2903.08, and OVI, R.C. 4511.19, on appeal by the state on its interlocutory right to appeal a ruling granting a motion to suppress under R.C. 2945.67(A), the trial court's grant of a motion to suppress blood test results obtained by subpoena from a health care provider was not error since defendant had a legitimate expectation of privacy in the medical records that officers obtained from the hospital that treated him, and the officers' procurement of the records without a warrant violated defendant's Fourth Amendment right to be free from an unreasonable search, and the no good-faith exception justified the officers' conduct.

Impaired driving/Probable cause. State v. Martin | 2023-Ohio-2739 | 5th Appellate District | 08/07/2023 In a prosecution of OVI, R.C. 4511.19, and motor vehicle traffic offenses, the trial court's grant of motion to suppress was not error since officer did not have probable cause to arrest defendant where, although defendant smelled of alcohol and admitted to having two drinks, he did not show signs of impairment and, although he committed two minor traffic violations, his driving was not erratic and he pulled over promptly and legally, he did not have red, glassy, bloodshot eyes, did not sway or stumble when he exited the vehicle, properly performed the alphabet test and his speech to questions and instructions was clear and intelligible.

Impaired driving. State v. Fritsch | 2023-Ohio-2676 | 1st Appellate District | 08/02/2023 In a bench conviction of OVI, R.C. 4511.19(A)(1)(a), the trial court did not err in permitting the state's analyst to testify about the methamphetamine residue on a sticky note found in defendant's vehicle and admitting the analyst's report since methamphetamine is a drug of abuse, and the evidence of the drug residue supported a finding of constructive possession and was relevant to whether defendant operated his vehicle under the influence of a combination of alcohol and a drug of abuse, as well as arresting officer's testimony that defendant had bloodshot eyes and dilated pupils, that defendant admitted to drinking "a couple beers," starting the day before and stopping a few hours prior to the incident, and officer found a marijuana pipe on defendant's person.

Workers' Compensation

Amended claim/Discovery/Summary judgment. Shaeffer v. FC Industries, Inc. | 2023-Ohio-3732 | 2nd Appellate District | 10/13/2023 In employee's action seeking workers' compensation benefits for injuries sustained during the course of his employment, trial court erred in granting summary judgment to employer in response to employee's request to amend his claim to include the additional condition of substantial aggravation of pre-existing injury where employer's conclusory assertion that employee's failure to timely produce documents during discovery demonstrated employee's lack of evidence to support his amended claim was not an appropriate basis to grant a summary judgment, and employer's Civ.R. 37 motion to compel discovery should have been resolved prior to granting a motion for summary judgment.

Sight loss/Visual baseline/Preinjury corrected vision. State ex rel. Cogan v. Indus. Comm. | 2023-Ohio-3567 | Supreme Court of Ohio | 10/05/2023 Claimant's petition for a writ of mandamus seeking to compel industrial commission to vacate its order denying scheduled-loss award for total loss of sight in one eye is granted, with a limited writ, where commission abused its discretion by using claimant's uncorrected vision as his preinjury visual baseline merely because his preinjury vision was corrected by a hard contact lens rather than by surgery as in La-Z-Boy in which claimant's preinjury visual baseline was his surgically-corrected vision, so the commission can use claimant's contact lens-corrected vision in exercising its discretion to determine claimant's preinjury visual baseline and to use that baseline to determine whether the medical evidence supports an award for total loss of sight, R.C. 4123.57(B); under the statute, the standard for assessing postinjury vision is the claimant's uncorrected vision.

Subrogation/Administrative expense/ Settlement/Dissent. Thomas v. Logue | 2023-Ohio-3522 | Supreme Court of Ohio | 10/03/2023 In case in which claimant's workers' compensation claim, arising from injury by third-party tortfeasor, was allowed for some conditions but denied for additional conditions after bureau sought and paid for a second-opinion medical review where bureau recouped the cost of the medical review through subrogation from proceeds of claimant's settlement with third-party, court of appeals properly ruled that the cost of bureau's engagement of physician for the medical review should be paid by the bureau, rather than claimant, and should not have been taken from claimant's third-party settlement, since the medical review was not obtained on behalf of claimant or for his benefit, R.C. 4123.93(D); the case is remanded to the Court of Claims, and there is a dissenting opinion in this case.

Average weekly wage/Calculation/ Special circumstances. State ex rel. Lott v. Indus. Comm. of Ohio | 2023-Ohio-3554 | 10th Appellate District | 09/29/2023 Claimant's petition for a writ of mandamus seeking to compel industrial commission to vacate its order denying his request to exclude a period of incarceration and post-incarceration classes from calculation of average weekly wage is denied where, although incarceration can be considered special circumstances within meaning of R.C.

4123.61, claimant did not demonstrate that his period of incarceration established special circumstances justifying departure from the standard calculation of average weekly wage.

Loss-of-use/Physician's reports/ Objective findings. State ex rel. Heilman v. Indus. Comm. | 2023-Ohio-3073 | 10th Appellate District | 08/31/2023 Relator's petition for a writ of mandamus seeking to compel industrial commission to vacate its order denying payment of total loss-of-use compensation for deceased husband is granted where commission improperly relied on physician's reports which did not comply with the holding in State ex rel. Wallace because physician did not accept the objective findings of the coroner and therefore physician's reports could not constitute some evidence on which commission could base its order, R.C. 4123.57(B).

Permanent total disability/Sedentary work/Physician's report. State ex rel. Kidd v. Indus. Comm. | 2023-Ohio-2975 | Supreme Court of Ohio | 08/29/2023 Ordering commission to vacate its denial of claim for permanent total disability, on reasoning that claimant's work capabilities were inconsistent with the definition of sedentary work, Ohio Adm. Code 4121-3-34(B)(2)(a), was error since physician's report is "some evidence" that claimant's capacities to sit, stand, and walk may be combined, rendering her capable of sedentary work in some environments, and the nonmedical disability factors—including prevalent workplace accommodations and telework options—support the commission's determination that claimant is capable of engaging in sustained remunerative employment; as well, in determining whether a claimant is capable of returning to the job market, the commission may consider whether jobs exist that are reasonably likely to accommodate a claimant's medical restrictions.

Discovery/Appeal/Dismissal. Greene v. HOC Transport | 2023-Ohio-2867 | 9th Appellate District | 08/16/2023 In claimant-truck driver's claim for workers' compensation benefits for injuries sustained in a traffic accident where staff hearing officer determined that claimant was an employee, prompting employer to appeal and claimant to file a complaint under R.C. 4123.512 to establish his right to participate in the workers' compensation system, trial court erred in dismissing the action as a sanction for claimant's failure to comply with trial court's order requiring identification of expert witnesses since the trial court did not merely dismiss claimant's petition without prejudice, which would have left employer's appeal pending, but instead dismissed the entire action and marked the case closed, precluding employer's ability to have its appeal heard at all, R.C. 4123.512, and the statutory jurisdictional requirement bars the action from being refiled.