OHIO STATE BAR ASSOCIATION REPORT

A member publication of the Ohio State Bar Association

Ohio case law summaries from May 1, 2023 – July 31, 2023

In Case You Missed It: The following are selected summaries of cases decided by Ohio courts between May 1, 2023 – July 31, 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

Gravel sale. Gross v. Ohio Dept. of Agriculture | 2023-Ohio-1648 | 10th Appellate District | 05/13/2023 In administrative appeal of fine imposed by department of agriculture for appellant's sale of gravel in violation of Ohio Admin. Code 901:6-7-03(BB), trial court erred in affirming the decision since evidence showed that appellant did not charge a price for gravel but charged just a flat loading fee for labor and other resources required to move gravel, and therefore he did not violate the Code provision.

Banking and Commercial

Tort claim/Customer agreement/ Arbitration. Newton v. U.S. Bancorp Invest., Inc. | 2023-Ohio-1450 | 10th Appellate District | 05/02/2023 In plaintiffs' action against defendants-bank and advisor alleging, inter alia, intentional misrepresentation regarding annuity cash withdrawal which led to financial loss, trial court did not err in granting defendant's motion to stay proceedings pending arbitration where, although annuity was held at another bank, advisor was retained to provide general investment advice regarding all accounts, and any alleged tortious conduct does not bar enforcement of the broad arbitration provision in the account agreement with bank.

Construction

Contractor/Statute of repose. Martins Ferry City School Dist. Bd. of Edn. v. Colaianni Constr., Inc. | 2023-Ohio-2285 | 7th Appellate District | 06/28/2023 In board of education's breach of contract action against construction contractors and insurance companies, alleging defective work on school building projects, summary judgment in favor of contractors was not error where the action was filed outside the statute of repose for certain premises liability actions under R.C. 2305.131, and the repose period begins to run when a specific event occurs, in this case substantial completion of the project, regardless of whether a cause of action has accrued or whether any injury has resulted.

Home/Workmanlike manner/Inspection/ Reconsideration. Varwig v. JA Doyle, L.L.C. | 2023-Ohio-2251 | 6th Appellate District | 06/27/2023 In home buyers' action against home builder, asserting claim for failure to build in a workmanlike manner, resulting in summary judgment for builder, affirmed by the court of appeals, the instant court grants buyers' App.R. 26(A)(1) application for reconsideration where the court had reasoned that buyers had the ability to inspect the condition and construction of floor joists at the time of purchase and that the purported defects were plainly visible and did not require inspection to reveal their condition; however, the record supports buyers' contention that a question of fact exists as to whether any reasonably available inspection (which does not include a structural engineer's inspection) could have revealed the fact that the floor joists were inadequate in their load-bearing capacity prior to their purchase of the home, and therefore, builder's motion for summary judgment should have been denied by the trial court.

Negligence/General contractor/Active participation. Kruthaup v. Schoen Builders, L.L.C. | 2023-Ohio-2090 | 6th Appellate District | 06/23/2023 In plaintiff-independent subcontractor's negligence action against defendant-general contractor for injuries sustained while plaintiff was working on the second floor of a home construction site and fell to the floor below, summary judgment in favor of defendant was error where, although there is no general duty for a general contractor to render a workplace safe for subcontractors, the question remains as to whether defendant actively participated in plaintiff's work by exercising exclusive control over a critical variable in the workplace, namely the installation of guardrails to render the workplace safe, which would give rise to a duty owed to plaintiff.

Contract/Breach/Unjust enrichment. Bova v. B & J Pools, Inc. | 2023-Ohio-1680 | 7th Appellate District | 05/16/2023 In homeowners' breach of contract and unjust enrichment action against pool company for failure to construct pool in a competent manner, trial court erred in granting judgment in favor of homeowners as to their unjust enrichment claim where evidence showed that the pool company breached the parties' contract, but there was no evidence it was unjustly enriched by separate conduct or illegality, and an independent unjust enrichment claim cannot stand when parties have an otherwise enforceable agreement.

Contract/Breach. Betz v. Gist | 2023-Ohio-1589 | 2nd Appellate District | 05/12/2023 In plaintiff-contractor's mother's foreclosure action against defendants-property owners for default on mortgage-secured promissory note payable to plaintiff to pay for home repairs performed by plaintiff's son's company, summary judgment in favor of plaintiff was error where a certificate of occupancy relied on by plaintiff did not prove that the repairs were completed and plaintiff's affidavit was not sufficient to show that the work had been completed, so the question remains whether contractor's work that required payments on the note had been completed; also, defendants' consolidated appeal from the denial of their Civ.R. 60(B) motion for relief from judgment is dismissed as moot.

Consumer

Credit report/Billing dispute/Arbitration. Rosskam v. T-Mobile USA, Inc. | 2023-Ohio-2306 | 8th Appellate District | 07/06/2023 In former customer's action claiming that wireless service falsely reported his account as unpaid to credit agencies, resulting in lowering of his credit score, trial court did not err in granting wireless service's motion to stay pending arbitration where, although customer's claim was made after his account was closed, the claim arose directly out of his customer relationship

Consumer (Continued)

with wireless service, established by the parties' agreement which included an arbitration clause, and customer's claim stemmed from a billing dispute, which was subject to arbitration.

Auto loan/Garnishment/Judgment satisfied. John Soliday Fin. Group v. Moncreace | 2023-Ohio-1941 | 7th Appellate District | 06/12/2023 In lender's action seeking to recover the outstanding debt on a consumer auto loan, resulting in a default judgment, prompting lender to seek post-judgment enforcement and to obtain a garnishment order on borrower's earnings, trial court did not err in vacating the garnishment order where the vehicle was repossessed and sold to another buyer, borrower made regular payments on the amount borrower still owed, and at the time of the hearing, the judgment against borrower had been paid in full.

Contracts

Breach/Termination requirements. Daily Servs., L.L.C. v. Transglobal, Inc. | 2023-Ohio-2462 | 10th Appellate District | 07/18/2023 In plaintiff-staffing management company's breach of contract action against defendant-client in dispute over fees following termination of contract, summary judgment in favor of plaintiff was error since defendant properly terminated the parties' contract where it required written notice, but did not require notice by certified mail, so defendant's email notice was sufficient and unequivocal to express its intention to terminate the contract; also, there was no provision that defendant had an affirmative obligation to prove that plaintiff was not meeting its staffing requirements in order to terminate the parties' contract.

Slip and fall/Lease/Duty/Summary judgment. Schultz v. Fairlawn Office Park One, L.L.C. | 2023-Ohio-2233 | 9th Appellate District | 06/30/2023 In plaintiff's action against defendant-building management for negligence and breach of contractual duty, pursuant to the parties' lease, arising from injuries sustained when plaintiff slipped and fell on ice in parking lot, summary judgment in favor of defendant was error where defendant addressed only the negligence claim in its initial motion for summary judgment and only addressed the contractual duty claim for the first time in reply briefs, depriving plaintiff of the opportunity to respond to arguments regarding the duty to keep the property reasonably clean and free from snow and ice, created by the parties' lease.

Replevin/Dog. Butera v. Beesler, 2023-Ohio-2257 | 2023-Ohio-2257 | 11th Appellate District | 06/30/2023 In plaintiff's replevin action for return of dog from defendant after the parties ended their romantic relationship, judgment in favor of plaintiff met sufficiency/weight of evidence standards where, inter alia, plaintiff provided credible testimony that the dog was purchased as a surprise gift for him, defendant already had her own dog, and plaintiff named the dog and became its primary caregiver; as well, failure of defendant to provide to plaintiff a certificate of transfer under R.C. 955.11(B) did not preclude the court from considering other factors to determine whether the dog was gifted to plaintiff for the purposes of establishing ownership.

Breach/Failure to pay commission. Buckeye Hoya, L.L.C. v. Brown Gibbons Lang & Co., L.L.C., 2023-Ohio-2177 | 2023-Ohio-2177 | 8th Appellate District | 06/29/2023 In plaintiff-advisory business' breach of contract action against defendant-consulting firm for failure to pay commission under terms of agreement, summary judgment in favor of defendant was not error where, although trial court erred in sua sponte raising affirmative defense that consulting agreement was illegal because plaintiff and employees were not registered as brokers with securities and exchange commission to allow them to receive commission, judgment was legally correct on other grounds and error was not prejudicial.

Breach/Unliquidated damages/Civ.R. 54(C). Johnny Automatic Transm. v. Greathouse Transp. | 2023-Ohio-2184 | 8th Appellate District | 06/29/2023 In plaintiff-vehicle repair shop's breach of contract and "fraud/theft by deception" action in small claims court against defendant-vehicle owner for failure to pay for repair services, trial court did not err in granting default judgment in favor of plaintiff for amount owed on invoice plus post-judgment interest and costs where the amount of collateral damages plaintiff sought under Civ.R. 54(C) was well over amount of liquidated damages, and plaintiff failed to present evidence of the claimed unliquidated damages stemming from the collateral effects of defendant's failure to pay and the municipal court was required to demand a presentation of proof of those damages before it could award them.

Release. McOmber v. Liebrecht | 2023-Ohio-2019 | 3rd Appellate District | 06/20/2023 In plaintiffs-cattle farm owners' action against defendants-partners alleging, inter alia, breach of fiduciary duty after farm ceased operations due to financial difficulties, trial court erred in granting defendants' motion for summary judgment where the provision in a purchase agreement between plaintiffs and third parties related to defendants, apparently releasing defendants from liability, was ambiguous, and extrinsic evidence showed that the question remains whether the release provision was intended to operate as global or a more limited release.

Breach/Sale of business. Austin v. Mid-Ohio Pipeline Servs., L.L.C. | 2023-Ohio-1958 | 5th Appellate District | 06/13/2023 In executive's breach of contract action against companies for failure to pay him the agreed share of proceeds from sale of the companies, as provided in parties' separation agreement, summary judgment in favor of executive was not error where the parties agreed that executive was to be treated as a partial owner of the companies in the event of sale, companies had sole control of drafting a phantom ownership agreement, which was to provide a vehicle for transfer of executive's interest that vested upon a change of control event, and companies' failure to provide the phantom ownership agreement was a material breach of the separation agreement.

Breach/Summary judgment/Relief from judgment. Chester/12, Ltd. v. Epiq Constr. Servs., Inc. | 2023-Ohio-1886 | 8th Appellate District | 06/08/2023 In building owner's action for breach of contract and related claims against contractor, alleging that HVAC system installed by contractor's subcontractor was defective, resulting in summary judgment for contractor on reasoning that the HVAC system failed because of tenant-gym's improper maintenance, trial court's denial of building owner's Civ.R. 60(B) motion for relief from judgment, asserting excusable neglect, is affirmed; building owner did not establish a meritorious defense to contractor's motion since it failed to provide an opinion by a properly qualified HVAC expert that contractor's work did not conform to the contract requirements or was otherwise below the standard of care expected from a professional HVAC installer.

Breach/Title transfer. Worldwide Motor Sales Ltd. v. Young | 2023-Ohio-1897 | 8th Appellate District | 06/08/2023 In car dealership's breach of contract action against seller for failure to transfer title following purchase of trailer, summary judgment in favor of seller was error where the unambiguous terms of the contract showed that the trailer was sold to dealership in exchange for cash payment, the receipt of consideration was acknowledged, seller agreed to tender the title within a specified period, and seller's affidavit asserting that it had not been paid contradicted the clear terms of the contract and was prohibited under the parol evidence rule.

Breach/Unjust enrichment/Attorney fees. Metro Renovations 12, L.L.C. v. Sabir | 2023-Ohio-1867 | 5th Appellate District | 06/06/2023 In contractor's breach of contract and unjust enrichment claim against homeowners, alleging that they refused to allow completion of home renovation project funded by the Department of Veteran's Affairs (VA) to help injured veteran-homeowner to live more independently, trial court erred in ordering veteran's wife, who is his VA fiduciary, to pay attorney fees incurred by contractor in claim against wife for unjust enrichment since contractor was not the prevailing party in that claim, which was dismissed for lack of evidence of the home's value increase because of the renovation work, and wife was at most an incidental beneficiary and not a third-party beneficiary because renovations were not intended to directly benefit her.

Breach/Non-compete provision/ Arbitration. Carothers v. Shumaker, Loop & Kendrick, L.L.P. | 2023-Ohio-1907 | 6th Appellate District | 06/02/2023 After attorney-equity partner in firm resigned and joined competing firm in same building, in attorney's breach of contract action against former firm, seeking "retirement income" under partnership agreement, which contained a non-compete provision, where the dispute proceeded to arbitration, trial court did not err in confirming the arbitration award that attorney violated agreement's non-compete provision, that "retirement income" was not "earned income," and that the non-compete provision was overly restrictive, refining its terms; arbitrator had authority to interpret the partnership contract and did not exceed his powers because the award drew its essence from the parties' agreement, and trial court was not empowered under R.C. 2711.10 to review the arbitrator's decision and set aside the award as against public policy with regard to the non-compete provision.

Medical services/Child-patient/ Settlement/Divorce decree. Ashtabula Cty. Med. Ctr. v. Scruggs | 2023-Ohio-1795 | 11th Appellate District | 05/30/2023 In medical center's action against child-patient's divorced father, seeking amount of unpaid medical bills for services provided to child, resulting in a settlement agreement, trial court did not err in granting center's motion to enforce the agreement where father is required to support child pursuant to R.C. 3103.03(D), and provisions of child's parents' divorce decree do not control an action for recovery of bills incurred on behalf of child; also, center's non-appearance at pretrial hearing did not require dismissal for failure to prosecute.

Arbitration/Authority. Jones v. Brentwood Health Care Ctr. | 2023-Ohio-1655 | 9th Appellate District | 05/17/2023 In resident's action against care facility, alleging injuries sustained during her stay, trial court erred in denying facility's motion to stay and compel arbitration where, although the court found the arbitration agreement to be procedurally and substantively unconscionable as applied to resident, the court failed to meet the requirement to first determine whether there was, in fact, a contract which required arbitration of parties' disputes, and the question of whether resident's sister had authority to execute the arbitration agreement on her behalf may not be considered first on appeal.

Default judgment/Motion to stay. Dietrich v. Core | 2023-Ohio-1463 | 9th Appellate District | 05/03/2023 In plaintiffs' breach of contract and related claims action against defendants-coworking company and its owner/ representative in which plaintiff filed a motion for default judgment, resulting in a ruling that plaintiffs had no basis to seek a default judgment since defendants had filed a motion to stay and compel arbitration pursuant to the parties' contract, trial court erred in imposing sanctions against plaintiffs for frivolous conduct, R.C. 2323.51 and Civ.R. 11, without first holding a hearing; defendants' motion to stay effectively operated as a motion to dismiss and, under Civ.R. 12(A)(2), triggered a suspension of their 28-day filing deadline.

Breach. Natl. Church Residences First Community Village v. Kessler | 2023-Ohio-1437 | 3rd Appellate District | 05/01/2023 In care facility's breach of contract and promissory estoppel action against resident's daughter, seeking damages for services provided to mother, summary judgment in favor of facility was error where daughter cooperated in Medicaid eligibility process in the manner described in mother's admission agreement, daughter executed the agreement as mother's personal representative and not in daughter's individual capacity, and because daughter was not a party to the agreement in her individual capacity, she was not liable for the obligations of mother pursuant to R.C. 1337.092(A).

Corporate and Business

Close corporation/Shareholders' agreement/Fiduciary duty. Scala v. Scala | 2023-Ohio-2232 | 9th Appellate District | 06/30/2023 In action by plaintiff, one of business founder's children who inherited close corporation, against defendants-brother and estate, alleging that defendant breached his heightened fiduciary duty by circumventing equal share of business purpose of shareholders' agreement by amending agreement to allow defendant to acquire additional shares of business from ailing brother, trial court erred in granting summary judgment to defendants on reasoning that, irrespective of the substance of the amendment, plaintiff could not succeed on a claim of a breach of fiduciary duty as long as the amendment procedure was followed, but a provision can be adopted pursuant to the terms of an agreement and nonetheless violate a fiduciary duty, so the case is remanded; as well, the business-judgment rule is not a basis for finding for defendant-brother since that rule applies to disinterested directors rather than shareholders, such as in this case.

Criminal

Sentencing/Reagan Tokes/ Constitutionality. State v. Hacker | 2023-Ohio-2535 | Supreme Court of Ohio | 07/26/2023 In appeals challenging the constitutionality of the Reagan Tokes Law requiring the imposition of indefinite sentencing of offenders who have been convicted of first- or second-degree felonies for which life imprisonment is not an available sentence, with the sentence consisting of a minimum and a maximum term, R.C. 2929.14(A)(1)(a), (A)(2)(a), that allows the Ohio Department of Rehabilitation and Correction to retain offenders beyond their minimum terms but not beyond their maximum terms

when they violate laws or rules while incarcerated, the Ohio Supreme Court holds that the Law does not violate the constitutional provisions concerning the separation-of-powers doctrine, the offender's right to a jury trial, or the offender's due process rights under the void for vagueness doctrine, and the Law is not facially unconstitutional since it provides that offenders receive a hearing before they may be deprived of their liberty interest.

Sentencing/Community control violation/Maximum jail term. Olmsted Twp. v. Ritchie | 2023-Ohio-2516 | Supreme Court of Ohio | 07/25/2023 In a 2018 conviction by plea to, inter alia, four first-degree misdemeanor counts after merger and imposition of a 30-day jail sentence on each count to run consecutively and with a five-year period of community-control sanctions, defendant subsequently violated community control by conviction of a new offense, and the trial court did not err in imposing a 150-day jail sentence on each count since the limit on the total length of time that a misdemeanant may be incarcerated for both a misdemeanor offense and a violation of a condition of a community-control sanction that was imposed for that offense is the statutory maximum jail term for the offense set forth in R.C. 2929.24(A)(1), in this case 180 days on each count, and this limit does not change based on the length of the jail term imposed at sentencing.

Sentencing/Reagan Tokes/Crim.R. 11 advisements. State v. Grays | 2023-Ohio-2482 | 8th Appellate District | 07/20/2023 In the court of appeals' en banc review of a conflict of controlling authority within its appellate district, the court holds that a trial court does not commit reversible error during a Crim.R. 11 colloquy by advising a defendant, who is subject to an indefinite prison term under the Reagan Tokes Law, that he or she may earn a reduction on his or her minimum prison term for exceptional conduct or an adjustment to incarceration when the defendant is required to serve a mandatory prison term pursuant to R.C. 2929.13(F); the trial court did err by failing to fully comply with the requirements of R.C. 2929.19(B)(2)(c) in failing to advise defendant at his Crim.R. 11 hearing that an administrative hearing would be held before his incarceration could be extended beyond the minimum stated term and that he could be evaluated by an administrative hearing more than once during his confinement; case is remanded to the trial court to provide defendant with each of the notifications required by R.C. 2929.19(B)(2)(c).

Jury/Batson challenge. State v. Stalder | 2023-Ohio-2359 | Supreme Court of Ohio | 07/13/2023 In a conviction of sexual imposition, R.C. 2907.06(A)(1), the trial court did not err by finding the requirements of a Batson challenge were not met since defendant's objection to the state's exercise of peremptory challenges to two male prospective jurors offered only a bare allegation of gender discrimination without providing any other relevant facts and circumstances to support an inference of gender discrimination, and thus defendant failed to establish a prima facie case of purposeful gender discrimination; case is remanded to the court of appeals for consideration of defendant's remaining assignments of error.

Criminal damaging/Sufficiency and weight/Consent. State v. Robinson | 2023-Ohio-2312 | 1st Appellate District | 07/07/2023 Conviction of criminal damaging, R.C. 2909.06(A)(1), did not meet the sufficiency and weight of evidence standards where, although the state provided sufficient evidence to show that defendant damaged the victim's vehicle, it failed to prove an essential element of the offense contained in the criminal damaging statute that the victim did not consent to the damage.

New trial/Leave to file/Dismissal. State v. Walker | 2023-Ohio-2311 | 1st Appellate District | 07/07/2023 Following a 2015 conviction of, inter alia, murder that was affirmed, the trial court's denial of 2022 Crim.R. 33(A)(1) motion for a new trial is modified by the court of appeals as a dismissal since the trial court lacked jurisdiction to entertain the untimely filed new trial motion in the absence of a motion for leave to file the new trial motion.

Weapons offenses/Felonious assault/Sufficiency of evidence. State v. Evans | 2023-Ohio-2297 | 8th Appellate District | 07/06/2023 Conviction of, inter alia, improperly discharging a firearm into a habitation and felonious assault and imposition of a total stated prison term of 13 to 16.5 years was not error where defendant's claim that evidence presented was insufficient to find defendant guilty, arguing there was no evidence defendant pointed his gun directly at a person in the house, that the bullets entered the first floor of the house while the occupants of the house were on the second floor at the time of the shooting and that no one was harmed during the shooting, is without merit since the state was not required to prove actual harm, R.C. 2903.11(A)(2), and defendant did not know where the persons were in the house when he fired the shots.

Plea/Maximum sentence/Reagan Tokes. State v. Tackett | 2023-Ohio-2298 | 8th Appellate District | 07/06/2023 In a conviction by plea to two counts of felonious assault, R.C. 2903.11(A)(1), with firearm specifications, to run consecutively totaling 16 to 18.5 years in prison was error since the trial court failed to advise defendant of the potential maximum sentence he faced under the Reagan Tokes Law or how that law would impact his maximum sentence, resulting in a plea that was not knowing, intelligent and voluntary, and what the court did to the state was contradictory in imposing a sentence two and a half years longer than the court had told defendant that he would receive, Crim.R. 11(C)(2)(a).

Speedy trial/Tolling. State v. Walker | 2023-Ohio-2304 | 8th Appellate District | 07/06/2023 In a prosecution of misdemeanor and felony drug, weapons and OVI offenses, the trial court erred in granting defendant's motion to dismiss for speedy trial violation pursuant to R.C. 2945.71 since defendant's arrest and subsequent transfer to Adult Parole Authority and finding of parole violation with 148 days' incarceration in a state correctional institution tolled the running of the speedy trial time because his detention was not related to the charges on which he was subsequently indicted, and his arrest did not trigger his speedy trial right.

Discovery/Recorded interview with victim. State v. Wainwright | 2023-Ohio-2292 | 8th Appellate District | 07/06/2023 In a conviction of gross sexual imposition, R.C. 2907.05(A)(1), defendant's right to due process and a fair trial was violated when the trial court denied defendant's request for a mistrial after learning that the state had failed to turn over in discovery most of the alleged victim's recorded interview with the police department's school resources officer until the trial was nearly over since the issue was whether the sexual activity was consensual and, in a case hinging

on the accuser's credibility, a video statement of the accuser describing the incident could very likely have changed the outcome of the case, Crim.R. 16(B).

Plea/Withdrawal/Jurisdiction. State v. Walton | 2023-Ohio-2307 | 8th Appellate District | 07/06/2023 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 following the filing of an Anders brief, the trial court's denial of defendant's subsequent Crim.R. 32.1 motion to withdraw plea was not error since the Rule does not vest jurisdiction in a trial court to maintain and determine a motion to withdraw a guilty plea subsequent to an appeal and an affirmance, Special Prosecutors.

Drug offense/Traffic stop. State v. Fips | 2023-Ohio-2295 | 8th Appellate District | 07/06/2023 In a conviction by plea to drug trafficking and drug possession arising out of a traffic stop, the trial court's denial of motion to suppress was error where, although the traffic stop was legal even though the officer may have been mistaken that the vehicle had a headlight that was not functioning since the headlight was on after the stop but, once it was determined that the headlight was operating, the continued detention of defendant was no longer reasonable nor was the search of the vehicle reasonable.

Statute of limitations/Rape of a minor. State v. Cross | 2023-Ohio-2335 | 5th Appellate District | 07/06/2023 In a conviction of multiple counts of rape and forcible rape of a minor, the statute of limitations did not bar prosecution since, at the time of each effective date of the amendments to R.C. 2901.13, extending the statute of limitations, the statute had not expired under the former version of the statute, and defendant was still subject to prosecution; however, the trial court erred by sentencing defendant to the currently applicable sentence for forcible rape of a child on two of the counts.

Sentencing/Consecutive sentences/ Judicial release. State v. Gilbert | 2023-Ohio-2274 | 12th Appellate District | 07/03/2023 In a conviction by plea to felonious assault, felony gross sexual imposition and felony abduction that was affirmed, and judicial release was thereafter granted, the state's claim that the offender must serve at least the first two prison terms of a consecutive sentence before being eligible for judicial release is without merit since the timing limitations on seeking judicial release are provided in R.C. 2929.20(C), but the limitation claimed by the state is not, nor is that limitation listed in R.C. 2929.14, demonstrating that the legislature did not intend that as a limitation in granting judicial release.

Sentencing/Community control violations/Post-release control. State v. Jackson | 2023-Ohio-2208 | 1st Appellate District | 06/30/2023 Following a conviction by plea to violating the duty to register and imposition of community control, the trial court did not err by revoking community control after defendant's violation by failing to maintain his sex offender registration with the sheriff's office and by residing outside the state without prior approval; the trial court did err in failing to address defendant personally and by not asking whether he wished to exercise his right of allocution, and the court also failed to properly notify defendant of post-release control; remanded to correct sentencing errors.

Self-defense/Jury instructions. State v. Claren | 2023-Ohio-2219 | 9th Appellate District | 06/30/2023 In a conviction of murder and a firearm specification, defendant's proposed jury instructions concerning the state's ability to rebut the presumption of self-defense, under either the earlier version of the statute or the current version, were legally deficient because they did not present the trial court with the correct governing law, and defendant did not demonstrate that the trial court committed plain error.

Forfeiture/Return of seized property. State v. Castagnola | 2023-Ohio-2218 | 9th Appellate District | 06/30/2023 In a conviction by plea to retaliation with forfeiture specifications dismissed, the trial court erred by denying appellant's motion for the return of seized property without having any evidence before it as to what became of the car after it was impounded by the police; matter is remanded for the trial court to receive evidence as to what became of the car so that it can determine whether appellant is entitled to relief.

Competency/Sentencing/Solitary confinement. State v. Ford | 2023-Ohio-2220 | 9th Appellate District | 06/30/2023 In a conviction of, inter alia, 22 counts of aggravated murder, the trial court's competency findings were supported by "some reliable and credible evidence" where two doctors who examined defendant determined defendant at the time of his examinations understood the nature and objective of the legal proceedings against him; the trial court erred in sentencing defendant to solitary confinement on six separate days each year for the remainder of his life; also discussed joinder, prosecutorial misconduct, demonstrative evidence and Miranda.

Witnesses/Witness intimidation/Evid.R. 404(B). State v. Echols | 2023-Ohio-2206 | 1st Appellate District | 06/30/2023 In a conviction of, inter alia, aggravated murder, three counts of murder and eight counts of attempted murder, the trial court did not contravene Evid.R. 404(B) in permitting evidence of witness intimidation by admitting into evidence defendant's attempts to intimidate a witness by writing a message on the wall indicating that the witness was a cooperating witness and making a gun gesture, and by a letter defendant wrote while incarcerated threatening the witness' wife since the threats were evidence of his efforts to intimidate witnesses and reflect a consciousness of guilt; concurring and dissenting opinions.

Self-defense/Jury instructions. State v. Terry | 2023-Ohio-2234 | 9th Appellate District | 06/30/2023 In a conviction of, inter alia, murder, the trial court did not commit plain error in its self-defense instructions since R.C. 2901.09 does not apply to conduct that occurred prior to the effective date of the statute, although not all the court of appeals' districts concur with this analysis, and the trial court did not err in its jury instructions by instructing the jury that the state had to disprove defendant's claim that he acted in self-defense beyond a reasonable doubt and that the state could rebut the presumption that defendant acted in self-defense under R.C. 2901.05(B)(2) by a preponderance of the evidence.

Plea/Validity/Coercion. State v. Bodine | 2023-Ohio-2197 | 3rd Appellate District | 06/29/2023 In a conviction by plea to two counts of assault, R.C. 2903.13(A)/(C)(5), plea was validly made where there is nothing in the record from which to conclude that the trial court led defendant to believe he could not get a

fair trial or a fair sentence after a trial and, contrary to defendant's argument, the trial court never made threats of a harsher punishment if defendant proceeded to trial; however, the trial court did err by determining it lacked jurisdiction to rule on defendant's motions to use medication while on community control while case was on appeal since, while an appeal is pending, a trial court has jurisdiction to preside over issues that are not inconsistent with the judgment appealed from.

Plea/Plea agreement/Lack of consideration. State v. Johnson | 2023-Ohio-2282 | 7th Appellate District | 06/29/2023 In a conviction by plea to felonious assault, R.C. 2903.11(A)(2), plea agreement was the result of defendant's reliance on the state's illusory and unfulfillable promises, and thus the plea agreement lacks consideration and is invalid where the state promised to allow defendant to withdraw his plea, but it is an unfulfillable promise since it was not within the prosecutor's authority to do so, Aponte; remanded with instructions that the trial court allow defendant to withdraw his guilty plea, and proceedings on remand should be conducted by a trial court judge who has not participated in the prior proceedings.

Restitution/Hearing. State v. Mitchell | 2023-Ohio-2239 | 5th Appellate District | 06/29/2023 In a conviction by plea to unlawful sexual conduct with a minor, R.C. 2907.04(A), the trial court erred by ordering defendant to pay $8,538 in restitution by failing to hold a restitution hearing, R.C. 2929.18(A)(1), since defendant disputed the amount of restitution, Lalain; remanded for hearing on restitution.

Self-defense/Felonious assault. State v. Giglio | 2023-Ohio-2178 | 8th Appellate District | 06/29/2023 In convictions of two counts of felonious assault involving defendant taking one shot at two victims, defendant's claim he was acting in self-defense is without merit since multiple felonious assault convictions may be supported by evidence showing that the shot was fired by a defendant toward multiple victims in the line of fire, and "defendant failed to produce legally sufficient evidence of self-defense to trigger the state's [burden of persuasion] to overcome that evidence," Messenger, and there was credible evidence, including surveillance video, presented that defendant pointed a gun in the direction of the teenage victims and discharged his firearm after they had turned and began to run away.

Disorderly conduct/Sufficiency of evidence. State v. Gibson | 2023-Ohio-2202 | 3rd Appellate District | 06/29/2023 Conviction of disorderly conduct, R.C. 2917.11(A)(3), was not supported by sufficient evidence since defendant's use of the words "red-headed bitch" to his male neighbor in a dispute about the neighbor blocking defendant's driveway with his vehicle did not constitute "fighting words" since under the circumstances presented in this case, it would not have provoked immediate retaliation where the words were not particularly loathsome and used only once, defendant was on his own property about 40 to 50 yards away from his neighbor and did not approach him and, although the neighbor testified to feeling "a little" alarmed or bothered by defendant's insult, he did not indicate that he felt threatened or feared violence.

Sentencing/Post-release control. State v. Kamara | 2023-Ohio-2146 | 1st Appellate District | 06/28/2023 In a conviction by plea to aggravated vehicular assault, R.C. 2903.08(A)(1)(a), and OVI, R.C. 4511.19(A)(1)(a), the trial court failed to properly impose post-release control because aggravated vehicular assault is not an offense of violence under R.C. 2901.01(A)(9), and the trial court erred when it advised defendant that she was subject to a mandatory period of post-release control because since her offense was a non-violent third-degree felony, any period of post-release control should be discretionary; remanded.

Weapons offense/Invited error/Stipulation. State v. Harris | 2023-Ohio-2138 | 1st Appellate District | 06/28/2023 In a conviction by plea of no contest to improperly handling firearms in a motor vehicle, R.C. 2923.16(E)(1), although the state's explanation of circumstances failed to establish that defendant was a driver or occupant of a parked vehicle or that he had a loaded handgun in the motor vehicle, and the facts in the complaint fail to establish that defendant was the driver or occupant of a motor vehicle stopped by law enforcement, that the firearm was in the motor vehicle or that defendant failed to disclose to the officers that the firearm was in the motor vehicle; defendant invited the error by stipulating "to the facts that have been read into the record are appropriate."

Sex offender/Community notification/Exemption. State v. Wright | 2023-Ohio-2134 | 10th Appellate District | 06/27/2023 Following a 2020 conviction by plea to sexual battery, R.C. 2907.03, with the trial court informing defendant at the plea hearing that she would be registered as a Tier III sex offender, and subsequent grant of motion for judicial release, the trial court erred by granting defendant's motion for exemption from community notification pursuant to R.C. 2950.11(F)(2) since defendant did not seek relief from community notification at or before sentencing as required by R.C. 2950.11(F)(2), and the 20-year period had not expired as required by R.C. 2950.11(H)(2), and thus the hearing the trial court conducted after sentencing was not in accord with the law.

Obstructing official business/Intimidation. State v. Miletto | 2023-Ohio-2161 | 5th Appellate District | 06/27/2023 Bench conviction of obstructing official business, R.C. 2921.31, and intimidation, R.C. 2921.03, met the sufficiency and weight of evidence standards where defendant refused to comply with officers' orders to surrender and threatened them with his conduct; however, imposition of a curfew as a community control condition was not reasonably related to rehabilitating defendant, nor does it bear a relationship to the defendant's crimes or relate to his potential for future criminality.

Drug offenses/Testing/Chain of custody. State v. Kennedy | 2023-Ohio-2283 | 7th Appellate District | 06/27/2023 In a conviction of aggravated possession of drugs, the trial court did not prevent defendant from obtaining an independent analysis of the substance confiscated from his person in accordance with R.C. 2925.51 where defendant had the evidence retested by the state and did not arrange any other re-testing, nor did he raise any objections until the day of trial, and defendant's challenge to the chain of custody argument in a motion to suppress was not proper since chain of custody issues are not properly raised in a motion to suppress, but instead should be raised in a motion in limine.

Endangering children/Involuntary manslaughter/Recklessly. State v. Olah | 2023-Ohio-2112 | 11th Appellate District | 06/26/2023 Conviction of endangering children, R.C. 2919.22(A)(E), and involuntary manslaughter, R.C. 2903.04(A), arising out of three and a half year-old child's fall down steps

in defendant's-babysitter's and co-defendant's-mother's apartment was not supported by sufficient evidence since endangering children is a predicate for the charged offense of involuntary manslaughter, and the state failed to prove that defendant babysitter acted recklessly where the events occurred suddenly, were isolated, were not part of a pattern of conduct and were completely out of the ordinary sequence of events, rather than a reflection of defendant's heedless indifference to the consequences of her actions.

Marsy's Law/Victim/Appeal/Mootness. State v. McCauley | 2023-Ohio-2133 | 5th Appellate District | 06/26/2023 In a prosecution for sex offenses involving a minor as an alleged victim in which defendant was found not guilty, the court of appeals dismisses appeal by minor and minor's parents claiming that the trial court erred when it ruled that minor's parents did not meet the definition of "victim" in Ohio Const., Art 1, Sec. 10a(D), and erred by denying minor's parents be designated victim representative for the minor pursuant to Ohio Const., Art. I, Sec. 10a(B) and R.C. 2930.02 since the issues are moot and no justiciable controversy exists.

Domestic violence/Sufficiency and weight of evidence. State v. France | 2023-Ohio-2129 | 5th Appellate District | 06/26/2023 Convictions of physical harm domestic violence and threat domestic violence, R.C. 2919.25(A) and (C), were supported by sufficient evidence where, despite victim's recantation at trial, defendant's conviction was supported by victim's statements on 9-1-1 call and investigating officers' testimony and body cam of interaction with victim.

Weapons offenses/Dismissal/Second Amendment. State v. Parker | 2023-Ohio-2127 | 5th Appellate District | 06/26/2023 In a prosecution of having weapons while under disability, R.C. 2923.13(A)(1), and for improperly handling firearms in a motor vehicle, R.C. 2923.16(B), the trial court did not err in granting defendant's motion to dismiss since defendant was not a fugitive from justice and the statutes as applied to defendant are unconstitutional since the plain text of the Second Amendment to the U.S. Constitution covers defendant's conduct, namely, having a firearm in the glove compartment of her vehicle, because the state now bears the burden of proof and is required to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation," Bruen.

Sentencing/Community control/Blanket policy. State v. Coffman | 2023-Ohio-2104 | 5th Appellate District | 06/26/2023 In a conviction by plea to fifth-degree felony aggravated possession of drugs, R.C. 2925.11(A), (C)(1)(a), and appeal by the state of the imposition of community control for a period of one year that included residential and financial conditions, the trial court did not err where it expressly stated that it considered the pre-sentence investigation report, with the judge specifically noting defendant's low to moderate risk assessment score and the fact that she had no prior felonies or prison time and, although the judge remarked to having a blanket policy of not imposing a prison sentence under the circumstances presented, the state can cite to nothing within the record that would prohibit any judge from imposing an identical sentence.

Endangering children/Involuntary manslaughter/Recklessly. State v. Olah | 2023-Ohio-2113 | 11th Appellate District | 06/26/2023 Conviction of endangering children, R.C. 2919.22(A)(E), arising out of three and a half year-old child's fall down steps in babysitter's-defendant's and her co-defendant's-mother's apartment was not supported by sufficient evidence since endangering children is a predicate for the charged offense of involuntary manslaughter, and the state failed to prove that defendant babysitter acted recklessly where the events occurred suddenly, were isolated, were not part of a pattern of conduct and were completely out of the ordinary sequence of events, rather than a reflection of defendant's heedless indifference to the consequences of her actions.

Search/Motion to suppress/Probable cause. State v. Lang, 2023-Ohio-2026 | 2023-Ohio-2026 | 1st Appellate District | 06/21/2023 Grant of motion to suppress evidence of obtained through a search warrant was error since the issuing magistrate had a substantial basis for concluding that probable cause existed based on officers' investigation of the house where defendant resided and the house where he sold drugs since reliable evidence connected defendant's drug activity to the address where he returned after making drug sales at another location on a regular basis, providing the officer, who had numerous years of experience, to believe that evidence of drug trafficking would likely be found at the residence that defendant stayed on a daily basis.

Sentencing/Reagan Tokes. State v. Andreano | 2023-Ohio-2044 | 5th Appellate District | 06/21/2023 In a conviction by plea to aggravated trafficking in methamphetamine, R.C. 2925.03(A)(2) and (C)(1)(e), and imposition to an indefinite prison sentence of 7 to 10.5 years pursuant to the Reagan Tokes Act, defendant's claim that the indefinite sentencing pursuant to the Act, R.C. 2967.271, is unconstitutional because it violates his right to due process, his right to trial by jury, and the separation of powers doctrine is without merit in light of this circuit's opinion holding that the Law is constitutional, Householder.

Due process/Double jeopardy/Retrial. State v. Larabee | 2023-Ohio-2060 | 7th Appellate District | 06/21/2023 In a prosecution of two counts of gross sexual imposition of a minor, R.C. 2907.05(A)(4), in which the defendant was found not guilty of one count, defendant was not denied his right to due process by the re-trial of the other count since the indictment was sufficient and the state differentiated the bases of the charges to defense counsel in advance of trial, nor did a re-trial constitute double jeopardy since jeopardy does not attach when the jury is discharged because it is unable to agree on a count.

Sealing/Juvenile record. In re I.J. | 2023-Ohio-2024 | 06/21/2023 In an application to seal and expunge applicant's juvenile record in which trial judge granted application of 45 of 46 juvenile adjudications, trial court erred by not sealing the remaining juvenile adjudication since the juvenile court's findings in the record not sealed were not so dissimilar to the findings in the 45 sealed and expunged cases to warrant the different outcome in this case; remanded with instructions to seal and expunge the remaining application.

Jury/Waiver. State v. Grissom | 2023-Ohio-2038 | 9th Appellate District | 06/21/2023 In a conviction of aggravated robbery, trial court erred in holding a bench trial since it was without jurisdiction to do so because there was no valid jury trial waiver in writing pursuant to R.C. 2945.05, Pless; conviction vacated and action remanded for a new trial.

Criminal (Continued)

Evidence/Hearsay/Explanations of conduct. State v. Acker | 2023-Ohio-2085 | 5th Appellate District | 06/21/2023 In a bench conviction of obstructing official business, R.C. 2921.31(A), where officer was attempting to take defendant into custody on an outstanding warrant during an investigation about a citizen noise complaint against defendant but defendant fled since the state did not offer the officer's testimony concerning his being informed about an outstanding arrest warrant for defendant to establish the existence or validity of the warrant, but instead the officer's testimony about finding the warrant and investigating defendant's claims was necessary to explain why the officer took certain actions and thus was not prohibited hearsay.

Plea/Validity. State v. Servantes | 2023-Ohio-2029 | 11th Appellate District | 06/20/2023 In convictions by pleas in three separate cases to 13 felonies and one misdemeanor arising out of three separate instances of burglarizing and theft, pleas were not validly made for a failure to comply offense and for four fifth-degree felonies since the trial court failed to notify defendant at the plea hearing that a failure to comply charge carried a mandatory, consecutive sentence and the court also failed to notify defendant of the maximum penalty for the four fifth-degree felonies of aggravated possession of drugs, identity fraud, and two counts of breaking and entering, Crim.R. 11(C)(2).

Cruelty to a companion animal. State v. George | 2023-Ohio-2016 | 12th Appellate District | 06/20/2023 Bench conviction of cruelty to a companion animal, R.C. 959.131(B), met the sufficiency and weight of evidence standards where home security video from a neighbor's surveillance camera showed defendant hitting his dog multiple times with a hard plastic bat in a profanity-laden rage, together with his admission to his neighbor that he "beat" his dog, even if there were no obvious physical injuries to the dog since defendant was charged under division (B) of R.C. 959.131, and the state was not required to prove "serious physical harm" to the dog to sustain a conviction against him.

Plea/Validity. State v. Servantes | 2023-Ohio-2116 | 11th Appellate District | 06/20/2023 In convictions by pleas in three separate cases to 13 felonies and one misdemeanor arising out of three separate instances of burglarizing and theft, pleas were not validly made for a failure to comply offense and for four fifth-degree felonies since the trial court failed to notify defendant at the plea hearing that a failure to comply charge carried a mandatory, consecutive sentence and the court also failed to notify defendant of the maximum penalty for the four fifth-degree felonies of aggravated possession of drugs, identity fraud and two counts of breaking and entering, Crim.R. 11(C)(2).

Search/Suppression. State v. Carpenter | 2023-Ohio-2014 | 9th Appellate District | 06/20/2023 In a prosecution of defendant for aggravated drug possession, trial court erred in granting motion to suppress the evidence resulting from the search of an unattended jacket since the court's factual findings are not supported by competent, credible evidence that the officer knew that the jacket belonged to the defendant.

Jury instructions/Lesser-included offense. State v. Woodard | 2023-Ohio-1989 | 1st Appellate District | 06/16/2023 In a conviction of felonious assault, R.C. 2903.11(A)(1), the trial court erred by refusing to instruct the jury on the lesser-included offense of assault, R.C. 2903.13(A), since the jury could have reasonably acquitted defendant of felonious assault under a complicity theory for his brother's shooting of the victim, and the jury could have convicted him of misdemeanor assault for his punch to the victim's face.

Sentencing/Consecutive sentences. State v. Ingram, III | 2023-Ohio-1998 | 2nd Appellate District | 06/16/2023 In convictions by pleas of guilty in two separate cases to improper handling of a firearm in a motor vehicle, R.C. 2923.16(B), in one case and to receiving stolen property, R.C. 2913.51(A), in the other case, imposition of a prison term of 18 months in each case to be served consecutively, together with a mandatory consecutive prison term of six years for the automatic firearm specification, was not supported by the record under R.C. 2929.14(C)(4)(b) since the offenses in this case were not committed as part of a course of conduct, but instead were separate offenses that occurred approximately one year apart.

Forfeiture/Civil. State v. Pitts | 2023-Ohio-2005 | 6th Appellate District | 06/16/2023 Following conviction of, inter alia, drug offenses, on appeal by state of dismissal of consolidated civil forfeiture case, trial court erred in dismissing the civil forfeiture claims since the intent of the procedure was to continue the forfeiture action into the consolidated criminal case, and defendant waived any error with respect to that procedure and all parties and the court fully understood that the forfeiture cases were pending but stayed until the criminal cases were resolved.

Plea/Validity. State v. Johnson | 2023-Ohio-2008 | 6th Appellate District | 06/16/2023 In a conviction by plea to felonious assault, R.C. 2903.11(A)(1), plea was validly made where, although trial court did not fully comply with Crim.R. 11(B)(2) and (C)(2)(b), did not completely fail to comply, and the court's failure to tell defendant that his plea or admission could not be used against him in future proceedings, that information is beneficial to a defendant, so its omission cannot show that the defendant was prejudiced, Krauzer, and defendant's claim of self-defense is not necessarily inconsistent with a plea of no contest to felonious assault, or necessarily indicative of a lack of understanding of the nature and effect of the plea, Ormes.

Plea/Right to trial by jury. State v. Hermes | 2023-Ohio-2011 | 6th Appellate District | 06/16/2023 In a convictions by plea in two cases to six counts of gross sexual imposition, R.C. 2907.05(A)(4), trial court erred by failing to strictly comply with Crim.R. 11(C)(2)(c) by not informing defendant that he had a right to a trial by jury; remanded.

Appeal/Final order. Wernert v. Ohio Parole Bd. | 2023-Ohio-1984 | 10th Appellate District | 06/15/2023 In inmates' complaint against, inter alia, parole board alleging inmates had been denied meaningful consideration of parole due to defendants' alleged "blanket policy" prohibiting prospective parolees from accessing victim impact statements submitted to defendants, the trial court erred by sua sponte dismissal pursuant to Civ.R. 12(B)(6) without notice to the parties where the trial court consolidated separate cases without addressing the specific allegations and claims in the complaint in this case, and thus the decision and entry was not a final appealable order.

Plea/Sex offender classification/ Prejudice. State v. Hindman | 2023-Ohio-1974 | 8th Appellate District | 06/15/2023 In a conviction by plea to endangering children and to two counts of sexual battery, plea was invalid where the trial court failed to provide defendant a Crim.R. 11 advisement prior to his plea that he would be subject to a sex offender classification, and defendant was not required to demonstrate prejudice, Dangler.

Jury/Instructions/Transferred intent. State v. Hunt | 2023-Ohio-1977 | 8th Appellate District | 06/15/2023 On reconsideration in a conviction of, inter alia, two counts of felonious assault, R.C 2903.11(A)(1) and (A)(2), the trial court did not give an erroneous transferred-intent jury instruction since the evidence supports the jury's finding that defendant knowingly caused serious physical harm to the victim, independent of any transferred intent to kill another person, because defendant was not aiming at the person who had shot at him and defendant did not accidentally shoot another person who happened to be nearby that person since defendant had to turn 180 degrees in order to shoot the victim, and thus defendant was clearly not intending to kill the person he claimed had been shooting at him.

Witnesses/Expert witness/Lay witness/ Purpose. State v. Walker | 2023-Ohio-1949 | 11th Appellate District | 06/12/2023 In convictions in two separate cases of drug offenses, the trial court did not commit plain error in allowing an officer to testify as a lay witness under Evid.R. 701 or as an expert witness under Evid.R. 702 about what the defendant's purpose was concerning the evidence seized from defendant during a traffic stop where the witness was qualified under either standard based on his extensive specialized training and experience in law enforcement investigations of drug trafficking, and nothing in the officer's testimony raises a reliability question since his testimony was based on his knowledge and experience in the field of narcotics, and thus the Daubert factors do not apply to this kind of testimony.

Appeal by state/Jurisdiction/Any other decision. State v. Riebe | 2023-Ohio-1948 | 11th Appellate District | 06/12/2023 Court of appeals dismisses notice of appeal by the state of the trial court's "Order and Judgment of Conviction" and "Order of Intervention" where one judgment sentences defendant after he entered a plea of no contest to two misdemeanor OVI charges and the other judgment grants defendant's request for intervention in lieu of conviction on the charges of improperly handling firearms in a motor vehicle and endangering children after defendant entered a plea of guilty, since neither judgment qualifies as one that can be appealed by the state as a matter of right because they fall under the category of "any other decision" for which leave is required under R.C. 2945.67.

Sentencing/Jail-time credit. State v. Griffin | 2023-Ohio-1938 | 12th Appellate District | 06/12/2023 In convictions in four separate cases, the trial court erred in its award of jail-time credit by miscalculating the amount due to defendant since he was entitled in one case to 295 days of jail-time credit (75 days he spent in county jail and the other 190 days he spent in the community correctional facilities plus an additional 30 days of jail-time credit for confinement prior to his sentence); 265 days confinement relating to his community control violations in a second case; 13 additional days when he was held for various periods of time relating to his third case and subsequent community control violations, and 11 additional days in either the third or fourth case when he was held awaiting sentencing in all four cases.

Evidence/Other acts. State v. Kryling | 2023-Ohio-1921 | 6th Appellate District | 06/09/2023 In a conviction of aggravated trafficking in drugs, arising from defendant's sale of methamphetamine to a confidential informant, the trial court erred in admitting certain portions of the recorded prison calls made by defendant that were inadmissible other acts evidence pursuant to Evid.R. 404(B), but it was harmless error since the remaining evidence supported defendant's conviction, including his admission in the recorded calls he sold "something" to the informant and his statement to the officer that he sold drugs to the informant because of his need to continue procuring drugs for himself.

Sentencing/Information outside the record/Allocution. State v. Sears | 2023-Ohio-1925 | 6th Appellate District | 06/09/2023 In a conviction by plea to aggravated possession of drugs, imposition of a prison sentence of 36 months was error since the trial court considered information outside of R.C. 2929.19(B)(1)(a) by relying on input from the Adult Parole Authority and the county probation department and by failing to limit its consideration to the record, the pre-sentence investigation report, victim impact statements and information presented in person at the sentencing hearing, without allowing defendant to respond, violating the Crim.R. 32(A)(1) right of allocution, Yates and Fowler.

Jury trial/Waiver. State v. Barnhart | 2023-Ohio-1916 | 7th Appellate District | 06/08/2023 Bench convictions of two defendants of breaking and entering, R.C. 2911.13, are reversed by the court of appeals since the waiver of jury trial entry filed by their trial counsel was not signed by defendants as required by R.C. 2945.05 and Crim.R. 23(A), and invited error is not a valid argument by the state to circumvent strict compliance with R.C. 2945.05.

Aggravated assault/Self-defense/ Reconsideration. State v. Williams | 2023-Ohio-1903 | 8th Appellate District | 06/08/2023 On reconsideration by the court of appeals, bench conviction of aggravated assault, R.C. 2903.11(A)(1), was not against the weight of evidence where defendant's claim of self-defense is without merit since, although defendant was attempting to prevent his friend, the victim, from driving while intoxicated, there is no evidence in the record that victim was physical before defendant punched him, nor that defendant's only means of escape was the use of force.

Speedy trial/Continuances. Cleveland v. Barnes | 2023-Ohio-1888 | 8th Appellate District | 06/08/2023 In a bench conviction of first-degree misdemeanor assault and second-degree misdemeanor criminal damaging, the trial court violated defendant's statutory speedy trial right, R.C. 2945.71(B)(2), where the events claimed by the state to toll the running of the speedy trial time did not constitute tolling events since the trial court's sua sponte continuance did not toll the time because the trial judge gave no reason for its continuance as required by R.C. 2945.72(H), and the city's request for a continuance in order for it to secure its sole witness also did not toll the time, Reeser; convictions and sentence are vacated.

Jury/Inconsistent verdicts. State v. Harris | 2023-Ohio-1892 | 8th Appellate District | 06/08/2023 Convictions of, inter alia, two counts of felonious assault, R.C. 2903.11(A)(2), arising out of a road-rage incident, were not against the weight of evidence because the

jury reached inconsistent verdicts since the fact that the jury found defendant guilty of felonious assault (caused or attempted to cause physical harm by means of a deadly weapon) while not guilty of felonious assault (causing serious physical harm) did not undermine the jury's verdict since each count of a multicount indictment is distinct and independent of all other counts, and inconsistent verdicts on different counts do not justify overturning a verdict of guilt.

Appeal/Magistrate's decision/Crim.R. 19. Strongsville v. Henry | 2023-Ohio-1891 | 8th Appellate District | 06/08/2023 In a conviction of municipal ordinance attempted petty theft where matter was referred to a magistrate, but the magistrate's journal entry did not comply with Crim.R. 19(D)(3)(a)(iii) since it was not designated as a "magistrate's decision" and did not notify the parties of the effect of failing to timely file objections, the court of appeals vacates and remands the conviction so that the magistrate can prepare and file a decision complying with Crim.R. 19(D)(3)(a)(iii), and the parties may then have the opportunity to file objections to the magistrate's decision.

Sentencing/Community control. State v. Moore | 2023-Ohio-1819 | 8th Appellate District | 06/01/2023 In a conviction by plea to attempted improperly handling of firearms in a motor vehicle, imposition of community control sanctions barring drug and alcohol use and requiring drug testing and attendance at a 12-step program was error since the offense for which his sentence was imposed did not involve drug or alcohol use.

Insanity/Conditional release. State v. Hickman | 2023-Ohio-1793 | 11th Appellate District | 05/30/2023 After defendant was found not guilty by reason of insanity in his 1984 trial on two counts of aggravated murder, the trial court did not err by denying the recommendation of defendant's psychologist and an independent expert that he be granted conditional release from a hospital into a less-restricted group home since the trial court found that defendant's borderline intellectual functioning and the severity of his history of violence are uncontroverted, and the trial court was not unreasonable in concluding defendant "is a potential threat to public safety and other people if he were to be released in an uncontrolled and unmonitored environment other than a hospital setting."

Witnesses/Personal knowledge/ Double jeopardy. State v. Piercefield | 2023-Ohio-1781 | 12th Appellate District | 05/30/2023 In a conviction of domestic violence, R.C. 2919.25(A), the trial court erred by permitting an investigating officer to testify to matters outside his personal knowledge, Evid.R. 602, where officer's testimony was based on the alleged victim's out-of-court statements; also, since the reversal is not based on insufficient evidence, but mere trial error, the double jeopardy clause does not bar re-trial.

Mistrial/Invited error. State v. Graham | 2023-Ohio-1784 | 9th Appellate District | 05/30/2023 In a conviction of assault, R.C. 2903.13(A), and disorderly conduct, R.C. 2917.11(A)(1), the trial court did not err by denying defendant's motion for a mistrial where victim testified on cross-examination that defendant had OVI convictions and also testified that defendant was drinking, slurring her words, and "probably drunk" at the time of the incident but, since defense counsel elicited the testimony about defendant's prior OVI convictions during his cross-examination of the witnesses, any error in the admission of that evidence was invited error.

Sentencing/Community control violation/Prison sanction. State v. Van Den Eynde | 2023-Ohio-1790 | 3rd Appellate District | 05/30/2023 In a conviction by plea to two counts of trafficking in cocaine, R.C. 2925.03(A), the trial court erred by imposing a prison sanction for a community control violation without having expressly reserved a stated range of prison terms at defendant's original sentencing hearing, R.C. 2929.19(B)(4), Brooks.

Search/Traffic stop/Passenger. State v. Brady | 2023-Ohio-1783 | 9th Appellate District | 05/30/2023 In a conviction of drug and weapon offenses, the trial court did not err by denying a motion to suppress where defendant was a passenger in vehicle during a traffic stop, and he did not challenge the validity of the stop or that the length of the driver's detention was unlawful, and in a vehicle subject to a lawful traffic stop that has passengers, the Fourth Amendment permits the detention of those passengers for the duration of the driver's lawful detention, King.

Evidence/Officer investigation/Non-hearsay. State v. Lowe | 2023-Ohio-1747 | 8th Appellate District | 05/25/2023 In a conviction of, inter alia, murder of an infant, the trial court did not err in allowing admittance of two officers' testimony since two of the statements were not hearsay since they explained the next step in the officers' investigation after investigating whether the child's death could be explained in the manner that they were told by various non-medically trained persons, including defendant, and defendant failed to establish he was prejudiced by another statement by an officer since the officer's testimony was subsequent to the testimony of four medical witnesses who had already testified consistently with the officer's testimony.

Right to counsel/Plea. State v. Gainer | 2023-Ohio-1760 | 10th Appellate District | 05/25/2023 In a conviction by plea to first-degree misdemeanor assault, R.C. 2903.13(A), and imposition of community control, the trial court's subsequent revocation of community control for a violation of its terms and imposition of reserved 180 days imprisonment was error since the offense was a petty offense, Crim.R. 2 and, since defendant had a constitutional right to counsel, as well as pursuant to Crim.R. 32.3, and because he did not appear with counsel at sentencing nor did the trial court engage in the appropriate colloquy with defendant regarding his constitutional right to counsel and whether he intended to waive that right, the trial court denied his constitutional right to counsel; remanded.

Competency/Expert evaluations/ Stipulations. State v. Kronenberg | 2023-Ohio-1749 | 8th Appellate District | 05/25/2023 In a bench conviction of, inter alia, three counts of violation of a protection order, the trial court did not err in accepting the stipulations of the parties and finding defendant competent and able to waive her right to counsel and proceed pro se based on expert evaluations where, after evaluations of two experts came to opposite conclusions on defendant's competency and ability to waive counsel and proceed pro se, the trial court had a third expert evaluate defendant who also found defendant competent to stand trial and proceed pro se.

Sentencing/Jail-time credit. State v. Wells | 2023-Ohio-1753 | 8th Appellate District | 05/25/2023 In trial court's award of 199 days of jail-time credit for the time that defendant was arrested and remained in jail until a community-control violation hearing, the court erred by failing to include 23 days of jail-time credit that defendant served before posting bond after being arrested to the 199 days of jail-time credit earned while jailed for a community control violation; however, defendant failed to submit any documentation for eight days jail-time credit he believes he is entitled to for transport to the facility.

Mandamus/Dismissal/Notice. State ex rel. Roush v. Hickson | 2023-Ohio-1696 | Supreme Court of Ohio | 05/23/2023 Court of appeals' dismissal of complaint for a writ of mandamus to compel the trial court judge who sentenced relator to correct an allegedly illegal criminal sentence was error since a court must give the parties notice and an opportunity to be heard before taking notice of facts contained in another court's docket and relying on those facts to sua sponte dismiss a complaint for failure to comply with R.C. 2969.25.

Sentencing/Community control violation/Due process. State v. Bentley | 2023-Ohio-1708 | 9th Appellate District | 05/22/2023 In a conviction by plea to aggravated possession of drugs, R.C. 2925.11(A), imposition and subsequent violation of community control, the trial court committed plain error in its imposition of the 24-month reserved prison sentence since it failed to inform defendant that she had the right to present evidence on her own behalf and to confront adverse witnesses at either her preliminary hearing on her alleged violations and, at the final hearing, the trial court never informed defendant of her rights nor determined that she understood the rights she was waiving, Harmon.

Search/Reasonableness/Impairment. State v. Flack | 2023-Ohio-1705 | 3rd Appellate District | 05/22/2023 In a conviction by plea to, inter alia, drug and weapon offenses, the trial court did not err by denying motion to suppress where initiation and the duration of traffic stop were not unreasonable under the circumstances since defendant's license plate was not displayed "in plain view" within the meaning of R.C. 4503.21, and trooper's observations of indicators of impairment of defendant justified the duration of the traffic stop and defendant's continued detention during which a canine sniff was performed that developed into probable cause to search defendant's vehicle.

Evidence/Police report/Firsthand knowledge. State v. McCaulley | 2023-Ohio-1711 | 11th Appellate District | 05/22/2023 In a conviction of OVI, R.C. 4511.19(A)(1)(a), and improperly handling firearms in a motor vehicle, R.C. 4511.19(A)(1)(a), the trial court did not err by denying admission of statements contained in the police report indicating defendant had a fractured hip after his accident that defendant sought to admit through Evid.R. 803(8)(b) as statements made by his healthcare providers in order to support defendant's argument that he was injured and it affected his performance of the Standardized Field Sobriety Tests, but the statements were not based on the arresting officer's own firsthand knowledge or observations and the healthcare providers were under no duty to report the information.

Sentencing/Due process/Religious belief. State v. Loftis | 2023-Ohio-1687 | 2nd Appellate District | 05/19/2023 In a conviction by plea to sexual battery, R.C. 2907.03(A)(5), claim that the trial court violated defendant's right to due process and the First Amendment Establishment Clause, alleging the trial court's sentencing decision was improperly based on the judge's religious beliefs, is without merit since the judge's reference to religious belief was not the basis of the sentencing decision, and the judge adhered to the applicable statutory sentencing provisions in sentencing defendant which did not affect the fundamental fairness of the sentencing procedure, Arnett.

Ineffective assistance/Speedy trial. State v. Garner | 2023-Ohio-1685 | 2nd Appellate District | 05/19/2023 In a conviction of failure to comply with an order or signal of a police officer, trial counsel rendered ineffective assistance by failing to file a motion to dismiss due to a speedy trial violation since, after calculating the days excluded from consideration, the speedy time limit had been exceeded when defendant was brought to trial.

Sentencing/Allied offenses/Rape. State v. Smith | 2023-Ohio-1670 | 8th Appellate District | 05/18/2023 In a conviction of two counts of rape, R.C. 2907.02(A)(1)(c), and one count of attempted rape, R.C. 2923.02 and 2907.02(A)(1)(c), the trial court did not plainly err by not merging the offenses as allied offenses of similar import since the rape offenses were distinct and separated in time and circumstance where victim testified that the rapes occurred when she was awakened on separate occasions in different positions on the bed, R.C. 2941.25(B); also discussed, R.C. 2907.02(A)(1)(c) is not unconstitutionally vague.

Sentencing/Jail-time credit/Firearm specification. State v. Thomas | 2023-Ohio-1668 | 8th Appellate District | 05/18/2023 In a conviction by plea to attempted felonious assault, R.C. 2903.11(A)(2)/2923.02, with a one-year firearm specification, and to having a weapon while under disability, R.C. 2923.13(A)(2), in appeal by the state to the award of jail-time credit to a mandatory prison term for a firearm specification, the trial court's sentence is contrary to law to the extent it applies jail-time credit to the mandatory prison term imposed for the firearm specification under the plain language of R.C. 2929.14(B)(1)(b), Mims.

Restitution/Marsy's Law. Cleveland v. Fuller | 2023-Ohio-1669 | 8th Appellate District | 05/18/2023 In a conviction by plea to OVI, the trial court did not err in ordering restitution in the amount of $7,300, notwithstanding that the city code limits restitution to $5,000 since the city code unambiguously conflicts with Marsy's Law that contains no restrictive language and permits a victim to recover the full amount of economic loss so long as the award is established by the preponderance of the evidence under R.C. 2929.28(A)(1) or 2929.18(A)(1); also, whether a defendant is unable to pay the amount of restitution is irrelevant under Marsy's Law, Rudolph.

Ineffective assistance/Substitute counsel. Cleveland v. Wells | 2023-Ohio-1666 | 8th Appellate District | 05/18/2023 In a conviction by plea to municipal ordinance aggravated disorderly conduct, defense counsel provided ineffective assistance since plea was not validly made because counsel's failure to appear on the day of trial and substitute counsel's inability to proceed with the trial and unfamiliarity with the case, combined with the trial court's refusal to grant a continuance, rendered plea involuntary by forcing defendant to accept a plea she would not otherwise have accepted since the lack of an opportunity for substitute counsel to investigate the circumstances of the offense, to consult with defendant,

to prepare a defense and instead to recommend defendant plead guilty to an amended charge was a denial of effective assistance of counsel.

Failure to comply/Verdict form. State v. Dardie | 2023-Ohio-1656 | 9th Appellate District | 05/17/2023 In a conviction of failure to comply with an order or signal of a police officer, R.C. 2921.331(B) and (C)(5)(a)(ii), a third-degree felony, the verdict form failed to connect the "substantial risk" element to the "willful elusion or flight from a police officer" element, and that is the "only path to a felony conviction for failure to comply," McDonald, and thus the verdict form supports only a first-degree misdemeanor under R.C. 2921.331(C)(3).

Jury/Instructions/Aiding and abetting/Principal offender. State v. Curtis | 2023-Ohio-1652 | 5th Appellate District | 05/15/2023 In a conviction of trafficking in cocaine and possession of cocaine, each with a major drug offender specification, although the trial court's instruction on aiding and abetting did not include an instruction that the defendant must have the same culpable mental state as the mental state required for commission of the principal offense, the jury charge did not mislead the jury in a matter materially affecting defendant's substantial rights since the evidence pointed to defendant as the principal offender and that he acted with the culpable mental state of "knowingly" required by the principal offense.

Evidence/Gang membership/Motive. State v. Williams | 2023-Ohio-1634 | 5th Appellate District | 05/15/2023 In a conviction of aggravated riot and assault, the trial court's admission of evidence that defendant and other youths were affiliated with gangs was not error since the state introduced the gang evidence for a purpose independent of defendant's character or propensity to commit a crime since the affiliations of the individuals involved, the timing of the attacks and that the individuals who were attacked were not gang affiliated, were central to proving the interrelationship of the parties and the motive for the attacks, not to suggest that defendant was guilty based on his character.

Bail/Forfeiture/Good cause. State v. Harvey | 2023-Ohio-1614 | 3rd Appellate District | 05/15/2023 In a prosecution for drug offenses, the trial court's forfeiture order of $250,00 bail bond by bonding company was not error where the testimony presented at the show cause hearings contradicted the company's claim that defendant's capture was made impossible by a network of persons protecting defendant from capture since a bonding company employee and an employee of another bonding company stated that they were close to capturing defendant, and the bonding company must have known that defendant was a flight risk in view of the serious charges against him, but it still chose to act as surety, R.C. 2937.36(C).

Venue/Murder. State v. Ritchey | 2023-Ohio-1625 | 11th Appellate District | 05/15/2023 In a conviction of murder of a newly-born infant by defendant mother, R.C. 2903.02(A), the trial court did not err in ruling that venue was proper in the county where the deceased infant was found because it could not be reasonably determined where the offense was committed since defendant's statements regarding the birth of the infant were uncorroborated and, after the passage of almost 30 years, they were not capable of corroboration; also discussed, expert testimony, live birth, dissociative disorder, diminished capacity, coroner's autopsy report, hearsay, confrontation, Evid.R. 702, 803.

Search/Warrant/Suppression. State v. Harrison | 2023-Ohio-1618 | 3rd Appellate District | 05/15/2023 In a conviction by plea of no contest to drug and weapon offenses, the trial court did not err in denying motion to suppress where the probable cause warrant for a tracking device was based on an officer's personal observations of defendant engaging in a controlled-drug buy with a confidential informant, the affidavit identified the name of the person to be tracked and described with particularity the property to be tracked, and the affidavit stated substantially the offense and the factual basis for the officer's belief that the tracking device would yield evidence of the offense based on his personal observations and not based on information provided by the confidential informant.

Confrontation Clause/Medical diagnosis and treatment. State v. Smith | 2023-Ohio-1613 | 3rd Appellate District | 05/15/2023 In a conviction of sex offenses, including 12 counts of rape involving three minors under 13 years-old by their stepfather, admission of redacted video recordings of the forensic interviews of the victims did not violate the Confrontation Clause where made for medical diagnosis and treatment, Arnold, but the trial court's holding that a prison sentence was mandatory for the gross sexual imposition counts under R.C. 2907.05(C)(2)(a) was error, Bevly.

Self-defense/Appeal by state/Double jeopardy. State v. McElroy | 2023-Ohio-1609 | 9th Appellate District | 05/15/2023 In App.R. 5(C) appeal by the state of the trial court's grant of defendant's motion for acquittal, the trial court erred in granting the motion of acquittal for murder and for felonious assault on the basis of self-defense since the amendment to the self-defense statute, R.C. 2901.05(B)(1), was procedural, not substantive, Brooks and Messenger, and thus the amendment did not make substantive changes to the elements of any offenses; however, the judgment of acquittal is affirmed since principles of double jeopardy bar re-trial on those charges.

Attempted failure to comply/Driver's license suspension. State v. Chatman | 2023-Ohio-1590 | 2nd Appellate District | 05/12/2023 In a conviction of attempted failure to comply with an order or signal of an officer, R.C. 2923.02(A), the trial court's imposition of a driver's license suspension was error since a license suspension is authorized only when a defendant is convicted of actual failure to comply with R.C. 2921.331 because attempted failure to comply is a distinct crime under R.C. 2923.02, and the mandatory license suspension under R.C. 2921.331(E) does not address the offense of attempt to commit an offense.

Jury/Instructions/Transferred intent. State v. Hunt | 2023-Ohio-1566 | 8th Appellate District | 05/11/2023 In a conviction of, inter alia, two counts of felonious assault, R.C 2903.11(A)(1) and (A)(2), the trial court did not give an erroneous transferred-intent jury instruction since the evidence supports the jury's finding that defendant knowingly caused serious physical harm to the victim, independent of any transferred intent to kill another person, because defendant was not aiming at the person who had shot at him and defendant did not accidentally shoot another person who happened to be nearby since defendant had to turn 180 degrees in order to shoot the victim, and thus defendant was clearly not intending to kill the person who had been shooting at him.

Witnesses/Credibility/Weight of evidence. State v. Patterson | 2023-Ohio-1568 | 8th Appellate District | 05/11/2023 Convictions of grand theft, aggravated robbery and robbery were not against the weight of evidence where, although victim's testimony contained many inconsistencies, her testimony was consistent concerning the elements of the charged offenses, any inconsistencies appearing in the victim's testimony were not so significant as to completely undermine her credibility, and any judgments as to the prudence of the victim's behavior in her interactions with defendant are irrelevant in determining whether the jury clearly lost its way in convicting defendant.

Sentencing/Consecutive sentences/ Jointly recommended. State v. Curry | 2023-Ohio-1571 | 8th Appellate District | 05/11/2023 In a conviction by plea to involuntary manslaughter with a firearm specification, and having weapons while under disability, imposition of concurrent and consecutive prison sentences totaling 17.5 to 22.5 years was not error since the alleged failure of the trial court to make the consecutive-sentence findings under R.C. 2929.14(C)(4) is not subject to review on appeal pursuant to R.C. 2953.08(D)(1) since the "imposition of non-mandatory consecutive sentences within an agreed sentencing range is a jointly recommended sentence that is authorized by law and not reviewable on appeal under R.C. 2953.08(D)(1)," Grant.

Evidence/Video/Sentencing/Allied offenses. State v. Sanders | 2023-Ohio-1565 | 8th Appellate District | 05/11/2023 Conviction of disseminating matter harmful to juveniles and two counts of endangering children was not against the weight of evidence where trial testimony described a video displaying a sexual act, and thus a video of that sexual act was not a prerequisite for the conviction, Chavez; however, the trial court did commit plain error by not merging the convictions for sentencing as allied offenses of similar import since one charged count of gross sexual imposition was resolved when the state dismissed it, and the jury found defendant not guilty of the other charged count, and thus there was just one act that resulted in the convictions.

Evidence/Rebuttal evidence. State v. Komara | 2023-Ohio-1564 | 8th Appellate District | 05/11/2023 In a conviction of domestic violence, R.C. 2919.25(A), and criminal damaging or endangering, R.C. 2909.06(A)(1), the trial court did not err by not allowing rebuttal evidence by defendant of his alleged prior consistent statements in order to respond to the state's accusation of recent fabrication that the victim attacked him with a knife during an argument since the photo of defendant's cut that was the subject of interrogation at trial and was introduced into evidence as defendant's exhibit, he testified that the photo was taken at the police station, and the text on the exhibit indicated the photo depicted a "right heel cut from DV, domestic violence," and thus the trial court did not err by disallowing testimony of an officer or introduction of a police report.

Evidence/Failure to preserve video. State v. Palmer | 2023-Ohio-1554 | 1st Appellate District | 05/10/2023 In a prosecution charging domestic violence, R.C. 2919.25(C), the trial court erred by dismissing the complaint based on an alleged due process violation since the record demonstrates that defendant's due process rights were not violated where the state, without bad faith, failed to preserve a video interview of the victim that would not have contributed in any appreciable way to defendant's defense and thus was not materially exculpatory since the affidavit of another officer filed in support of the complaint details what the victim told him in support of the charge, and that was prior to the second officer's interview, including that defendant hit him in the head with a hammer, and the record shows that the state provided defendant with the recording of that interview, and there is no suggestion that the other officer was unavailable to be questioned at trial.

Plea/Withdrawal/Presentence. State v. Shields | 2023-Ohio-1561 | 5th Appellate District | 05/09/2023 In an appeal by the state of the trial court's grant of defendant's pre-sentence Crim.R. 32.1 motion to withdraw his guilty plea, the trial court did not err where it found that defendant had a reasonable and legitimate basis for withdrawal of the plea that was stated in defendant's motion that he was prepared to enter a no contest plea until he learned that in order to take advantage of the agreed sentence, he had to enter a plea of guilty without appreciating the ramifications of a guilty plea on the impact on his ability to challenge the trial court's adverse ruling on his motion to suppress.

Search/Suppression. State v. Oliver | 2023-Ohio-1550 | 10th Appellate District | 05/09/2023 In a conviction by plea of no contest to two felony weapon charges, although the traffic stop of vehicle defendant was driving was arguably lawful, the trial court's denial of motion to suppress was error because officer's warrantless search of defendant resulting in the seizure of the weapons was unlawful since the trial court erred in finding the odor of raw marijuana coming from a car with five occupants justified officer's warrantless pat-down search of defendant and, because the state did not argue in the trial court that the pat-down search of defendant was justified as a protective frisk for weapons nor did it argue the inevitable discovery rule supported the evidence's admissibility, it waived those issues on appeal.

Jurisdiction/Juvenile court/Age. State v. Kocevar | 2023-Ohio-1513 | 2nd Appellate District | 05/05/2023 In a conviction of gross sexual imposition and three counts of rape, defendant was not deprived of equal protection by being tried and sentenced as an adult since the juvenile court lacked jurisdiction over defendant because he was 22 years-old when the indictment was filed and R.C. 2152.02(C)(3), 2152.12(J) and 2151.23(I) remove juvenile jurisdiction over a person not taken into custody or apprehended until after attainment of 21 years-old, and thus defendant was not similarly situated to persons who were subject to the juvenile court's jurisdiction.

Evidence/Hearsay/Evid.R. 804(B)(3). State v. Dranse | 2023-Ohio-1475 | 8th Appellate District | 05/04/2023 In a conviction of felony offenses, including two counts of attempted aggravated murder of a peace officer, the trial court did not err in granting state's motion in limine to exclude testimony by a person who would have testified that a female with defendant in a vehicle when stopped by police told the person that she shot the gun at officers pursuing her and defendant where there was a lack of corroboration of the alleged statement to the potential witness, Evid.R. 804(B)(3), since the person allegedly making that statement testified at trial that she did not make it.

Violating a protection order/Issuance. Cleveland v. Bolden | 2023-Ohio-1476 | 8th Appellate District | 05/04/2023 Bench conviction of two counts of violating a protection order, R.C. 2919.27(A)(2), was error since there was no evidence admitted at trial in

Criminal (Continued)

the record that defendant was shown the protection order or that a judge, magistrate or law enforcement officer informed defendant that a protection order had been issued pursuant to the requirements of R.C. 2919.27(D).

Sentencing/Community control/ Rehabilitation. State v. McQuade | 2023-Ohio-1483 | 8th Appellate District | 05/04/2023 In a conviction by plea to attempted violation of an anti-stalking protection order, R.C. 2923.02 and 2919.27, a fourth-degree felony, and telecommunications harassment, R.C. 2917.21(A)(1), a first-degree misdemeanor, imposition of a community control condition prohibiting defendant for five years from using alcohol or being near any location where alcohol was sold, served or used was error since there was no indication that defendant had a history of alcohol or drug abuse "that could possibly support the trial court's desire to rehabilitate" defendant, R.C. 2929.15(A)(1), Jones and Mahon.

Robbery/Armed/Firearm specifications/ Consecutive. State v. Crawley | 2023-Ohio-1492 | 10th Appellate District | 05/04/2023 Conviction in two cases of, inter alia, three counts of robbery, R.C. 2911.02(A), was supported by sufficient evidence that defendant was armed where items that were robbed were guns and under the statute a person is guilty of robbery if offender "[has] a deadly weapon on or about the offender's person or under the offender's control" and the statutory language does not suggest that an offender must have on or about his person a firearm separate from a firearm that is the object of the theft offense; trial court did err by running the firearm specification attached to each robbery offense concurrently since R.C. 2929.14(B)(1)(a)(iii) and (C)(1)(a) require firearm specifications to be served consecutively to each other and to the sentences imposed for the underlying felonies.

Sentencing/Restitution/Open court. State v. Ellis | 2023-Ohio-1464 | 9th Appellate District | 05/03/2023 In a conviction by plea to burglary, R.C. 2911.12(A)(2), 2929.14(A)(3)(a), and agreement to pay $4,200 restitution, the trial court erred in ordering restitution by failing to order the amount of restitution in open court since it is part of the sentence and is required to be made during the sentencing hearing, R.C. 2929.18(A)(1); remanded for a determination at a sentencing hearing of the amount of restitution to be made.

Sentencing/Child endangerment/ Driver's license suspension. State v. Michels | 2023-Ohio-1461 | 1st Appellate District | 05/03/2023 In a conviction by plea to two counts of child endangerment, R.C. 2919.22(C)(1), the state concedes the trial court committed error by imposing a three-year driver's license suspension since, for a violation of R.C. 2919.22(C)(1), a trial court may impose a class seven suspension of a driver's license from the range specified in R.C. 4510.02(A)(7) and that section specifies a suspension for "a definite period not to exceed one year;" remanded for re-sentencing.

Miranda/Suppression. State v. Keys | 2023-Ohio-1454 | 7th Appellate District | 05/01/2023 In a bench conviction of having a weapon under disability and of carrying a concealed weapon, denial of motion to suppress statements made by defendant while in custody was error since officers failed to provide Miranda warnings prior to their custodial questioning of defendant, and their questions did not relate to public safety concerns where officers had no evidence that defendant had a gun, defendant had been frisked and placed in a patrol car without any indication that he had been carrying a gun, and no one observed defendant do anything other than run the opposite way from a police officer after the officer drove near an area that he believed he heard a gunshot come from, but the officer's pat down of defendant revealed no gun or weapon.

Speedy trial/Continuance/Recusal. State v. Smith | 2023-Ohio-1504 | 4th Appellate District | 05/01/2023 In an appeal by the state of the trial court's dismissal of indictment for statutory speedy trial violation, the dismissal was error since the sua sponte continuance based on recusals of two trial judges that were filed before the speedy-trial time limit expired extended the time period within which the state was required to bring defendant to trial since a trial judge's recusal constitutes reasonable cause to continue a trial, Nichols.

Self-incrimination/Silence. State v. Speis | 2023-Ohio-1422 | 12th Appellate District | 05/01/2023 In a conviction of seven counts of gross sexual imposition of a minor, R.C. 2907.05(A)(4), the prosecutor did not impinge on defendant's Fifth Amendment privilege against self-incrimination by merely referring to his silence during opening statements since defendant remained silent when questioned by officers during an investigation and officers' questions to defendant were not coercive, and thus defendant was not deprived of the ability to voluntarily invoke the Fifth Amendment since there is no allegation or evidence that his failure to assert the privilege was involuntary, Salinas.

Plea/Negotiated plea. State v. Foster | 2023-Ohio-1434 | 3rd Appellate District | 05/01/2023 In a conviction of OVI in two separate felony OVI offense cases that were joined for trial, the trial court did not err in not accepting a negotiated guilty plea since there was no firm, concrete agreement between the parties because neither defense counsel nor the defendant indicated that there was a firm agreement with the state and, moreover, the trial court stated the proposed plea agreement was not a fair and just result in light of the fact that these would be defendant's sixth and seventh OVI offenses within 20 years, but would only result in two years or less incarceration; also discussed, joinder.

Education

Discrimination/Standing/Pandemic policy. Martin v. Ohio Univ. | 2023-Ohio-2511 | 4th Appellate District | 07/19/2023 In students' action against university, alleging lack of authority to mandate responses to pandemic, trial court erred in granting university's motion to dismiss as to discrimination based on vaccination status, R.C. 3792.04, since students had standing where their amended complaint alleged that they must comply with different testing requirements that are not required of vaccinated students and employees, and the complaint seeks injunctive relief; students did lack standing for other declaratory judgment claims, R.C. 2721.03, because they failed to show injury.

Contract/Breach/Tenure/Just cause. Ma v. Cincinnati Children's Hosp. Med. Ctr. | 2023-Ohio-1727 | 1st Appellate District | 05/24/2023 In tenured professor's breach of contract action against medical center for terminating his employment in violation of the parties' contract, consisting of a series of communications over a number of years that gave rise to the contractual relationship, summary judgment for medical center was error where the contract was ambiguous concerning professor's obligation to obtain sufficient funding, and the question remains whether professor's

failure to obtain sufficient funding under the contract constituted just cause to terminate his employment.

Termination/Altercation. Prude v. State Bd. of Edn. | 2023-Ohio-1672 | 8th Appellate District | 05/18/2023 In resident educator's appeal of board of education's decision to terminate his teaching license, trial court erred in reversing board's decision where the record established that educator engaged in a physical altercation with a student and failed to de-escalate the situation, demonstrating conduct unbecoming of the teaching profession pursuant to R.C. 3319.31(B)(1), and student's inappropriate behavior and educator's colleagues' failure to intervene did not negate or justify educator's decision to physically engage student.

University chair/Removal procedure/ Claim preclusion. Croce v. OSU Bd. of Trustees | 2023-Ohio-2156 | Court of Claims | 05/05/2023 In plaintiff-department chair's dispute with defendant-state university board of trustees in which he filed a complaint in common pleas court, claiming that defendant did not follow the procedure in Ohio Adm. Code 3335-3-35(B) when attempting to remove him as chair, resulting in summary judgment for defendant on reasoning that plaintiff was serving in an "at-will" capacity and then plaintiff subsequently filed the instant action in the Court of Claims asserting that defendant is liable to him as a result of wrongful removal in violation of Ohio Adm. Code 3335-3-35(B), and also claiming breach of contract and promissory estoppel, the trial court rules that plaintiff's claim for wrongful removal in violation of Ohio Adm. Code 3335-3-35(B) and breach of contract for violation of that provision are both barred by claim preclusion, but plaintiff's claim for breach of contract failure to pay him bonuses and claim asserting promissory estoppel remain for trial.

Elections and Campaign Finance

Proposed constitutional amendment/ Ballot language and title. State ex rel. One Person One Vote v. Ohio Ballot Bd. | 2023-Ohio-1928 | Supreme Court of Ohio | 06/12/2023 Relators' petition for a writ of mandamus to compel ballot board to adopt new ballot language and Secretary of State to adopt a new ballot title for proposed amendment to the Ohio Constitution to change some of the rules for proposing constitutional amendments by initiative petition is denied regarding relators' claim that the ballot language is misleading by failing to state the current law since relators have not shown that a description of current law is essential for voters to understand the new law under the proposed amendment, if approved; however, the writ is granted ordering the ballot board to adopt lawful ballot language that accurately characterizes and explains the definition of "electors" underlying the petition signature requirements in the proposed amendment where the ballot language does not accurately describe the number of elector signatures required from each county, and the writ is granted ordering the Secretary of State to prescribe a lawful ballot title that accurately describes the scope of the proposed amendment, without using the word "any" in reference to "constitutional amendment," since use of the word "any" in the title is likely to mislead voters.

Initiative petition/Constitutional amendment. State ex rel. DeBlase v. Ohio Ballot Bd. | 2023-Ohio-1823 | Supreme Court of Ohio | 06/01/2023 Registered voters' petition for a writ of mandamus to compel the Secretary of State to convene a ballot board meeting and to compel the board to vacate its determination under R.C. 3505.062(A) that an initiative petition proposes a single constitutional amendment and instead to determine that the petition contains more than one proposed amendment is denied since the only requirement under R.C. 3505.062(A) is that the provisions of a proposed amendment be related to a single general purpose, and there is no authority that limits a proposed amendment to broad general principles or that prohibits specific details in the nature of a legislative enactment; also, the board had no duty to issue a formal decision explaining its rationale after it conducted a meeting, heard public comment, and voted on the matter.

Environmental and Natural Resources

Mineral interests/Abandonment/ Notice. Toma v. Devaul | 2023-Ohio-2163 | 5th Appellate District | 06/28/2023 In plaintiffs-surface owners' action seeking a declaration that defendants-purported heirs, successors or assigns' reservation of mineral rights in property was abandoned under the Dormant Minerals Act, summary judgment in favor of defendants was not error where plaintiffs failed to thoroughly investigate the information in their possession concerning the residence of the mineral rights holders, plaintiffs' search was not considered reasonably diligent under R.C. 5301.56, and plaintiffs were not entitled to pursue notice via publication because their search was not diligent.

Estate Planning, Trust and Probate

Real property/Divorce/Survivorship. In re Estate of Coppick | 2023-Ohio-2279 | 4th Appellate District | 06/28/2023 In estate administrator's action seeking to sell real estate that was excluded from estate due to decedent's ex-wife's survivorship interest, trial court did not err in finding that decedent's interest in the real estate was a non-probate asset where the court reasoned that the underlying agreed divorce decree, stating that the parties would remain joint owners, continued the joint ownership with rights of survivorship, and because the decree expressly stated that the interest held was to remain unchanged after divorce, the statutory requirements of R.C. 5302.20(C)(5) were met to exclude the interest from the estate.

Family Law and Domestic Relations

Adoption/Contested/Best interest. In re D.M.B-M | 2023-Ohio-2560 | 5th Appellate District | 07/25/2023 Granting petition for a contested adoption of children is reversed where the court failed to adequately consider the best interest factors listed in R.C. 3107.161(B) prior to making its determination, and although the court was not required to list each factor individually, it must sufficiently indicate consideration of the factors for meaningful review on appeal.

Property division/House/Appreciation. Bozhenov v. Pivovarova | 2023-Ohio-2437 | 12th Appellate District | 07/17/2023 In divorce action in which husband challenged the division of property, trial court erred in equally dividing the equity in husband's premarital real estate where the house was husband's separate property under R.C. 3105.171 and was properly disbursed to him, but appreciation in the value of the house during the marriage was passive, not the result of any improvements made to the house by either spouse, so wife's equity interest in the house should have been based on the reduction in the mortgage balance during the marriage, rather than the fair market value of the house.

Shared parenting/Change of circumstances. Day v. Day | 2023-Ohio-2428 | 5th Appellate District | 07/13/2023 In divorce action in which father sought a change of parenting time after mother

moved away from area, trial court did not err in finding that there was a change of circumstances, warranting modification of the parties' shared parenting plan, where children had a lengthy daily drive to and from school and lacked educational stability when with their mother, children's residence at father's house during school days allowed for better stability and security while still allowing mother regular parenting time after school, and the factors in R.C. 3109.04(F) were considered to determine children's best interests.

Consideration of argument/ Servicemembers Civil Relief Act. Vitek v. Ward | 2023-Ohio-2235 | 9th Appellate District | 06/30/2023 In divorce action in which defendant-husband did not appear for the final hearing, resulting in a default judgment, trial court erred in denying husband's Civ.R. 60(B) motion for relief from judgment since trial court failed to address husband's argument that default judgment should not have been rendered against him where required affidavit under 50 U.S.C. Sec. 3931 (Servicemembers Civil Relief Act) was never submitted, and husband did not receive notice due to deployment.

Divorce/Spousal support/Cohabitation. Husni v. Husni | 2023-Ohio-2175 | 8th Appellate District | 06/29/2023 In divorce action where husband sought termination of spousal support obligation, trial court did not err in denying husband's motion where, although wife was cohabiting with boyfriend, they did not share expenses with respect to financing and day to day incidentals, and therefore they were not cohabiting under the law.

Postnuptial agreement/Validity. In re Estate of Taylor | 2023-Ohio-2195 | 3rd Appellate District | 06/29/2023 In plaintiff-wife's action against defendants-deceased husband's children seeking declaration that antenuptial agreement was void or invalid, judgment in favor of plaintiff is affirmed where document was a postnuptial agreement, rather than an antenuptial agreement, because parties were married prior to its execution, the postnuptial agreement was not allowed under former R.C. 3103.06, and there was no statutory exception because the parties' agreement did not serve to memorialize an oral antenuptial agreement.

Legal separation/Divorce/Service. Pelton v. Pelton | 2023-Ohio-2289 | 7th Appellate District | 06/26/2023 After husband filed a complaint for legal separation, rather than divorce, prompted by his religious beliefs, trial court did not err in granting wife's counterclaim for divorce where husband failed to file objections to magistrate's decision, pursuant to Civ.R. 53(D)(3), husband's counsel was served with the counterclaim by mail, and even if there had been a problem with service, husband prepared for and opposed at the divorce hearing the court's decision to grant the counterclaim for divorce, so the integrity and fairness of the process was not affected.

Divorce/Death of party/Existing orders. Estate of Jones v. Jones | 2023-Ohio-2115 | 11th Appellate District | 06/26/2023 In divorce action in which wife died before the final decree was issued, trial court did not err in denying husband's motions to dismiss and/or vacate trial court's protective order governing his deceased wife's healthcare records and order requiring husband to pay the special master's deposit, both issued before wife's death, where, although the divorce action and all pending motions were dismissed upon wife's death, the court continued to be empowered to enforce previously determined fixed rights and liabilities.

Parenting time/Change of circumstances. S.P. v. M.G. | 2023-Ohio-2084 | 2nd Appellate District | 06/23/2023 In dissolution of marriage action in which father filed motions for reallocation of parental rights and for modification of parenting time, trial court erred in dismissing father's motion to modify parenting time on reasoning that father failed to establish any change of circumstances where R.C. 3109.051(D) does not require a change in circumstances for determination of whether to modify parenting time.

Shared parenting. H.C. v. P.C. | 2023-Ohio-2110 | 5th Appellate District | 06/23/2023 In dissolution of marriage action in which mother sought reallocation of parental rights, trial court did not err in finding that there was no change of circumstances to warrant reallocation where the court's judgment was based on the best interest of the children, children were doing well in school and were integrated into families and communities in both homes, children did not want shared parenting plan to change, and evidence showed that the parents' disagreements and distinct parenting styles predated shared parenting plan, R.C. 3109.04.

Settlement agreement/Appeal/ Transcript. Cable v. Cable | 2023-Ohio-2041 | 5th Appellate District | 06/20/2023 In divorce action in which husband challenged the terms of parties' agreed settlement, judgment is affirmed since the regularity of proceedings must be presumed where husband did not provide transcripts of the hearing in which the parties' settlement agreement was read into the record or of the hearings in which the terms were disputed, husband did not submit a narrative transcript of proceedings pursuant to App.R. 9(C) or an agreed statement of case under App.R. 9(D), and because there was no underlying record, husband could not show that there was a factual dispute or that he did not agree to the settlement terms.

Property division/Spousal support. Carson v. Manubay | 2023-Ohio-2015 | 12th Appellate District | 06/20/2023 In divorce action in which both parties challenged division of marital property, trial court did not err in its division of property and in finding that award of spousal support to wife was appropriate where husband failed to show that earned income during separation period constituted separate property under R.C. 3105.171(A)(6)(a), gifts from wife's mother were intended to benefit both parties and were not wife's separate property, and spousal support award that was greater than wife's needs did not render the award an abuse of discretion.

Adoption/Consent/Non-support. In re Adoption of D.W.D.-H. | 2023-Ohio-1999 | 2nd Appellate District | 06/16/2023 In stepfather's petition for adoption of child, trial court erred in finding that the consent of biological father was necessary where father failed to have more than de minimis contact with child or to provide maintenance and support, and while father's imprisonment was a significant obstacle to his ability to provide support, he had no justifiable cause for his non-support for two and one-half years prior to incarceration and during the period following release from prison; also, even though mother never sought court-ordered child support, father had an independent statutory obligation to support child, R.C. 3107.07.

Civil protection order/Continuance/Counsel. C.M.R. v. B.T.B.S. | 2023-Ohio-1973 | 8th Appellate District | 06/15/2023 In petitioner's action seeking a domestic violence civil protection order against respondent-stepson, trial court erred in denying respondent's request for a continuance to obtain counsel where a continuance order was authorized pursuant to R.C. 3113.31(D)(2), even though petitioner did not consent, respondent had not previously requested a continuance, he was served with the protection order just days before the hearing, and inconvenience to parties would not override significant potential prejudice to respondent in proceeding without counsel.

Spousal support/Overtime income. Garren v. Garren | 2023-Ohio-1960 | 5th Appellate District | 06/13/2023 In divorce action in which husband challenged trial court's order for spousal support, the court did not err in its calculation of support where husband's overtime income was appropriately considered pursuant to R.C. 3105(C)(1)(a) because, although income was not guaranteed, evidence showed that husband regularly earned overtime income; also, husband failed to support his argument that the court erred in determining the effective date he was required to pay spousal support so the reviewing court may disregard that assignment of error, App.R. 12(A).

Custody. King v. May | 2023-Ohio-1927 | 5th Appellate District | 06/09/2023 Designating mother as the residential parent and legal custodian of the parties' minor child and denying father's motion for shared parenting is affirmed as being in the best interest of the parties' child where, inter alia, father had been either unresponsive or unwilling to assist mother when she requested help with the child or attempted to coordinate events and involve father in the child's life, father did not accept any of wife's offers to spend additional time with the child, father's work schedule would require the child to spend the majority of father's parenting time with father's mother, and the child is settled and happy in her daily routine, R.C. 3109.04(F).

Civil protection order. Swartz v. Van Deest | 2023-Ohio-1882 | 5th Appellate District | 06/06/2023 In petitioner's action seeking a dating violence civil protection order against respondent-former boyfriend for threatening her and entering her home without permission, trial court did not err in issuing the order where there was evidence that respondent committed domestic violence by engaging in menacing by stalking in violation of R.C. 2903.211, by calling petitioner's place of employment and making allegations against her, and by making threats, with the result that petitioner suffered mental distress which significantly affected her daily life, R.C. 3113.31.

Civil protection order. B.B. v. J.B. | 2023-Ohio-1870 | 10th Appellate District | 06/06/2023 In wife's petition for a civil protection order on behalf of herself and children against respondent-husband, alleging his intimidating and threatening behavior, trial court did not err in issuing the order where respondent did not provide credible witness testimony, there was evidence that he made threatening statements and engaged in physical acts of violence against petitioner and children, and petitioner presented credible evidence that her fear of imminent serious physical harm was reasonable, R.C. 3113.31.

Parenting time/Contempt. Macovitz v. Macovitz | 2023-Ohio-1850 | 9th Appellate District | 06/05/2023 In divorce action in which wife was found in contempt for not allowing husband to have visitation with children during designated times, trial court did not err in ordering wife to serve time in jail since she failed to substantially comply with purge conditions where she denied most of husband's ordered parenting time, she did not file objections to the decision that assigned dates on which she could purge contempt, and she made no attempt to maximize husband's time with children during purge period to make up for violations of shared parenting plan.

Child support/Modification. Horner v. Tarleton | 2023-Ohio-1785 | 9th Appellate District | 05/30/2023 In custody action where parties sought modification of parenting time and support, trial court erred in its calculation of child support where original support order was not subject to modification and new order should have been established, father had burden to show mother was voluntarily unemployed, but he presented no evidence regarding mother's income, educational and employment history, or ability to work, and therefore income should not have been imputed to mother, R.C. 3119.02.

Grandparent visitation/Magistrate's opinion/Objections/Final order. Haugh v. Zacher | 2023-Ohio-1761 | 10th Appellate District | 05/25/2023 In a custody dispute in which the father filed a complaint for sole legal custody of his daughter, trial court's dismissal of defendant-mother's objections to a magistrate's decision denying her motion to dismiss a motion for grandparent visitation and granting attorney fees to the maternal grandmother was error since mother's objections to magistrate's opinion were timely filed because trial court had adopted the magistrate's written decision, Civ.R. 53(D)(3)(b)(i) and (D)(4)(d).

Divorce/Frivolous conduct/Attorney fees. Wilson v. Wilson | 2023-Ohio-1752 | 8th Appellate District | 05/25/2023 In former husband's post-divorce motion to modify spousal support, trial court did not err in denying former wife's motion for attorney fees and sanctions pursuant to R.C. 2323.51 for husband's failure to respond to interrogatories and requests for production of documents since wife failed to provide a transcript of proceedings and regularity in the proceedings must be presumed, trial court's local rule provided deadline and procedure for seeking attorney fees but did not conflict with R.C. 3105.73, establishing means and method for awarding attorney fees, and husband's questionable credibility and incorrect assertions did not rise to level of frivolous conduct.

Child custody/Residential parent. In re M.A.G. | 2023-Ohio-1756 | 5th Appellate District | 05/24/2023 In custody action where father sought allocation of parental rights and responsibilities, trial court's designation of father as child's residential parent and legal custodian was not error since his prior guilty plea to assault did not involve an offense that would result in child being adjudicated neglected or abused, mother did not cooperate with father and fought to keep him out of child's life, child suffered mental and emotional stress because of mother's actions against father, and mother is unwilling to re-establish her relations with child, R.C. 3109.04.

Divorce/Marital property/Distribution. Matheson v. Matheson | 2023-Ohio-1709 | 9th Appellate District | 05/22/2023 In divorce action where wife challenged distribution of marital property, trial court erred in its calculation of marital debt where husband continued during trial, without permission of wife or the

court, to obtain loans to reduce debt, which added to parties' existing debts, evidence showed husband obtained loan proceeds in amounts more than necessary to pay off old debts, and question remains as to which marital debts must be paid with equity from sale of parties' marital home, R.C. 3105.171.

Custody/Shared parenting agreement/ Termination. S.T. v. J.H. | 2023-Ohio-1698 | 6th Appellate District | 05/19/2023 In custody action where mother sought reallocation of parental rights and responsibilities, trial court did not err in terminating shared parenting agreement and designating mother as sole residential parent where father was aware former counsel was suspended from practice of law, and the court did not violate its duty to supervise counsel or limit impact of misconduct on father, and father failed to show he requested continuance that was not reflected in record pursuant to App.R. 9(C) and (D).

Preadoption placement/Jurisdiction/ Prohibition. State ex rel. Davis v. Kennedy | 2023-Ohio-1593 | Supreme Court of Ohio | 05/16/2023 Petition for a writ of prohibition filed by relators-preadoption custodians of child seeking to prevent juvenile court judge from ruling on biological father's motion for parenting time, after juvenile court judge had ordered genetic testing and appointed a guardian ad litem, is granted since relators had filed a petition for adoption of child, and the probate court has exclusive jurisdiction over child's preadoption placement, preventing juvenile court from exercising jurisdiction to issue temporary orders permitting biological father to have parenting time with the child, R.C. 5103.16(D).

Divorce/Service/Overseas party. Anumandla v. Kondapalli | 2023-Ohio-1633 | 5th Appellate District | 05/15/2023 In wife's appeal of divorce decree, claiming that she was not provided notice, judgment is affirmed where wife was living overseas yet did not invoke the Hague Convention or other international accord as a basis for vacating the judgment for lack of service, she cannot raise question of personal jurisdiction for first time on appeal, and even if the merits of her argument were considered, the Hague Convention contains a provision for judgment without a certificate of service or delivery.

Spousal support/Imputed income/ Reduced obligation. Barry v. White | 2023-Ohio-1570 | 8th Appellate District | 05/11/2023 In dissolution of marriage action in which wife challenged modification of husband's spousal support obligation, trial court did not err in decreasing the level of his obligation based on his imputed income, which was lower than the incorrect level of his stated income, where R.C. 3105.18 provides for modification of the amount of support when circumstances change, husband's change in income was substantial and made the existing spousal support award no longer reasonable and appropriate, the change was not foreseeable at the time of the original decree, and wife failed to show that husband had the ability to earn greater income.

Child/Spousal support. Omar v. Mohamoud | 2023-Ohio-1548 | 10th Appellate District | 05/09/2023 In divorce action in which husband challenges spousal and child support obligations imposed by the trial court, judgment is affirmed since husband's income was appropriately calculated under R.C. 3105.18 because his testimony regarding income was considered by the court to not be credible and evidence showed that he had concealed the extent of his income; the amount of support was based on husband's actual income rather than imputed income due to underemployment.

Civil protection order/Findings/Ex parte communication. Elkins v. Denczak | 2023-Ohio-1545 | 5th Appellate District | 05/08/2023 In petitioner's action seeking a domestic violence civil protection order against respondent-former romantic partner, based on allegations of harassment and abuse, trial court's issuance of the order is affirmed where the order is very sparse and respondent did not request findings of fact and conclusions of law to rebut petitioner's testimony that she was in fear of imminent harm over threats sent by respondent, R.C. 3113.31(D); although an ex parte exchange between petitioner and court concerning her possessions was inappropriate, any error was not prejudicial because the exchange was not considered in issuing the order.

Custody/Medical issues. Brew v. Brew | 2023-Ohio-1457 | 1st Appellate District | 05/03/2023 In divorce action in which father appeals, inter alia, the designation of mother as the residential parent and legal custodian of their child, trial court's judgment is affirmed since its custody ruling is in the best interest of the child, who was diagnosed with autism and related medical issues, R.C. 3109.04(B)(1), where mother is a pediatrician and understands, better than father, the necessity of giving child the several medications to help child, mother and child have a close bond, father acknowledged that any change in the child's schedule would cause a very adverse effect on the child's learning and behavior, and, while mother was diagnosed with ADHD, there is no evidence that it prevents her from adequately caring for the child.

Custody/Prohibition/Habeas corpus. State ex rel. Speweik v. Stierwalt | 2023-Ohio-1470 | 6th Appellate District | 05/03/2023 In divorce action in which trial court changed custody of the parties' children from mother to father, mother's petition for writs of prohibition and habeas corpus to prevent trial court from exercising jurisdiction over temporary custody orders regarding her children and to return children to her is dismissed and writs are denied where court rendered the original divorce decree involving mother and father, so that court retains continuing jurisdiction over the children's custody matters, and, regarding habeas corpus, mother has an adequate remedy at law by objecting to the magistrate's order and moving to set the order aside, and she may subsequently appeal any adverse judgment issued by the court.

Custody/Overnight visitation/ Psychological condition. I.R. v. D.R. | 2023-Ohio-1427 | 9th Appellate District | 05/01/2023 In divorce action in which both parties sought custody of children, trial court did not err in awarding husband parenting time that did not include overnight stays where there is evidence that father was diagnosed with a psychological condition rendering him unable to control nighttime sexual behavior, he acknowledged that he lacked control over actions during episodes, and there was potential danger to children if father was allowed overnight visitations, R.C. 3109.04(F).

Insurance

Commercial general liability/Assault exclusion/Intent. Krewina v. United Specialty Ins. Co. | 2023-Ohio-2343 | Supreme Court of Ohio | 07/12/2023 In action by plaintiff-care facility resident, who was the victim of attack by a deranged resident, to declare that facility insurer's commercial general liability policy, which contained an exclusion for bodily injury arising from assault and battery, covered underlying judgment in favor of plaintiff pursuant to a settlement agreement, court of appeals erred in reversing trial court's insurance policy exclusion-based judgment for insurer since the fact that the attacking resident was found to lack the requisite mental state for a criminal conviction for assault did not change the fact that his conduct qualified as a civil-law assault and fit the plain and unambiguous language of the insurance policy exclusion.

Homeowners/Residence. Finger v. Liberty Mut. Personal Ins. Co. | 2023-Ohio-2308 | 8th Appellate District | 07/06/2023 In insured-property owner's action against insurer alleging, inter alia, breach of contract for rescinding homeowners policy and for denying coverage for fire damage to the property, summary judgment for insurer was not error where the property at issue was rental property, rather than insured's residence, the homeowners policy was unambiguous in specifying that coverage was for insured's residence, and insurer's online application was consistent with the terms of the policy as to coverage for property in which the insured resides.

Juvenile

Custody/Mandamus/Procedendo/Dismissal. Page v. Geauga Cty. Probate & Juvenile Court | 2023-Ohio-2491 | Supreme Court of Ohio | 07/20/2023 Relator's claim for a writ of mandamus to compel the court, two judges, and a judicial officer to proceed to a hearing on an ex parte motion seeking temporary custody of minor children is dismissed as to all parties based on relator's failure to caption her complaint "in the name of the state on the relation of the person applying" in compliance with R.C. 2731.04; relator's procedendo claim is also dismissed where a court is not sui juris and may not be sued in its own right, one judge was not assigned to the underlying custody action, the second judge already scheduled the hearing that relator requests, rendering the request moot, and the judicial officer was not assigned to the case.

Dependency/Delinquency. In re M.L. | 2023-Ohio-2515 | 5th Appellate District | 07/20/2023 Adjudication of child as dependent was error where the complaint alleging that the child was dependent was never filed, R.C. 2151.27, the facts asserted in a delinquency complaint filed by police department, alleging that child made threats of violence against his sister, were insufficient to state a claim of dependency under R.C. 2151.04, and subsequent placement of child in temporary custody through a delinquency disposition did not cure the incorrect finding of dependency.

Delinquency. In re J.O. | 2023-Ohio-2293 | 8th Appellate District | 07/06/2023 In an adjudication of juvenile as delinquent of adult felonious assault by means of a deadly weapon, felonious assault resulting in serious physical harm and tampering with evidence, the trial court committed plain error when it did not merge the delinquency adjudications of felonious assault and make a disposition of the allied offenses; the trial court is to hold a new disposition hearing for the juvenile on one count of felonious assault.

Custody. In re E.G. | 2023-Ohio-2305 | 8th Appellate District | 07/06/2023 Award of permanent custody of dependent children to agency was not error where, inter alia, mother made no progress in addressing her mental health needs and failed to benefit from parenting classes, she had anger management issues and refused to participate in further classes, she was dismissed from domestic violence classes, she did not have appropriate housing, and she failed to consistently visit children, while children's needs were being met in their foster placements, R.C. 2151.414.

Custody/Transcript review. In re Y.H. | 2023-Ohio-2272 | 1st Appellate District | 07/05/2023 Award of permanent custody of children to agency is reversed where the court terminated father's parental rights without conducting an independent review of the transcripts of the dispositional hearings, even though one transcript was properly filed and the other transcript was in progress, Juv.R. 40(D)(4)(d), and the court did not discuss magistrate's findings that father failed to provide support and abandoned the children, R.C. 2151.414(E).

Custody/Father. Knece v. Salyers | 2023-Ohio-2226 | 9th Appellate District | 06/30/2023 Award of custody of child to father on the grounds that a suitable biological parent has a paramount right to custody of their child is affirmed where, inter alia, evidence of father's suitability, R.C. 2151.23(A)(2), showed that he made arrangements for child's care before and after school and that he had a plan for living arrangements with child; also, guardian ad litem testified that after a full investigation he found that it was in child's best interest for father to have custody of her, and father overcame the presumption of abandonment where father attempted to visit with child, but mother prevented visitation.

Deviation from guidelines/Imputed income. Lake Cty. Dept. of Jobs & Family Servs. Child Support Enforcement Div. v. Trivsonno | 2023-Ohio-2255 | 11th Appellate District | 06/30/2023 Increase in father's child support obligation and denial of his claim for a downward deviation from the amount determined under the guidelines and child support worksheet is affirmed since mother lost her well-paying job, but father did not seek to have the court consider the issue of imputing income to mother for purposes of completing the worksheet, and a deviation based on relative financial resources does not refer to a party's untapped income potential or underemployment, so a deviation must be based on actual financial resources, R.C. 3119.23(E); also, while a court ordering a deviation from the child support guidelines must include findings of fact under R.C. 3119.22, denial of such a request does not require justification of the court's decision or a statement that the court considered the R.C. 3119.23 factors.

Custody/Legal. In re R.S. | 2023-Ohio-2224 | 9th Appellate District | 06/30/2023 Award of legal custody of child to paternal aunt was not error where parents asked aunt to take child days after birth and never asked for her return, parents' home was filthy, which required temporary removal of child's sibling, there were concerns about mother's mental health and father's drug use, and parents were sporadically employed and did not have a working vehicle, while aunt's home was safe and appropriate for child, child was bonded with aunt, and aunt agreed to obey court orders for parents' visitation with child, R.C. 2151.353.

Juvenile (Continued)

Custody. In re D.T. | 2023-Ohio-2245 | 6th Appellate District | 06/30/2023 In father's motion for custody of child, trial court did not err in terminating the parties' shared parenting plan and in designating mother as the residential parent of child where, inter alia, the shared parenting plan was not in child's best interest, child's interactions with family, including father's estranged family, were more favorable at mother's home, and although schools may be better at father's home, child was receiving a good education and had the benefit of extracurricular activities at mother's home, R.C. 3109.04.

Custody. In re I.F. | 2023-Ohio-2237 | 5th Appellate District | 06/29/2023 In agency's complaint seeking temporary custody of child, trial court did not err in returning child to biological mother's custody where no charges were filed after investigation in response to allegations of sexual abuse of child by mother's boyfriend, and the best interest factors under R.C. 3109.04 were considered, along with mother's wishes, R.C. 2151.42 and 2151.353.

Dependency/Complaint/Evidence. In re K.G. | 2023-Ohio-2198 | 3rd Appellate District | 06/29/2023 Adjudication of child as dependent was error where, inter alia, agency's complaint did not assert specific allegations relating to child but raised only an inference that he may be dependent due to mother's neglectful parenting of half-siblings; as well, agency did not set forth any dates with regard to the general allegation of dependency, R.C. 2151.04(C), and presented no evidence relating to child's condition or environment as of the complaint's filing date, there was no evidence of child's alleged dependency during the period of agency's involvement, and father was not party to mother's stipulation that child was dependent.

Custody. In re W.W. | 2023-Ohio-2149 | 9th Appellate District | 06/28/2023 Award of legal custody of children to father was not error where mother continued to struggle with mental health issues, she was unable to engage in normal and necessary daily activities on multiple occasions and children had to care for themselves while in her custody, father has been constant presence in children's lives, he maintains good relationship with extended family who are willing to supervise visitation with mother, and children expressed wishes to live with father, R.C. 3109.04 and 2151.414.

Visitation/Modification. In re L.S. | In re L.S., 2023-Ohio-2148 | 9th Appellate District | 06/28/2023 In custody action where mother sought modification of visitation of neglected and/or dependent children, trial court did not err in granting to mother unsupervised visitation with two children where best interest factors of R.C. 2151.414 and R.C. 3109.04 were appropriately considered because there was no requirement to show change of circumstances had occurred, mother met mental health treatment goals, she was cooperative and appropriate during supervised visits, and advancing maturity of children was considered.

Custody. In re Z.K. | 2023-Ohio-2150.pdf | 9th Appellate District | 06/28/2023 Award of legal custody of children to custodians was not error where mother's interaction with children was inconsistent, her visits remained supervised because she failed to comply with substance and mental health components of case plan, children's school performance improved while in care of custodians, custodians provided unwavering support and were meeting all children's needs, and children were well adjusted to custodians' stable and secure home, R.C. 3109.04, R.C. 2151.414.

Bindover. In re M.T. | 2023-Ohio-2140 | 1st Appellate District | 06/28/2023 In a juvenile delinquency action in which the state charged juvenile with, inter alia, adult aggravated murder, murder, attempted murder and felonious assault, the juvenile court erred in finding that there was no probable cause to believe the juvenile committed the aggravated murder count where the totality of the evidence showed that the juvenile knew about the plan to murder the victim, expected pay for it and participated in the plan.

Custody. In re E.M. | 2023-Ohio-2141 | 1st Appellate District | 06/28/2023 In custody dispute in which father sought termination of the parties' shared parenting plan, trial court did not err in granting father's motion for custody where, although the trial was delayed due to the pandemic and guardian ad litem's report was outdated at the time of judgment, the court weighed guardian's report accordingly and relied on evidence presented at trial showing that mother's lack of trust and abuse accusations towards father damaged mother and father's shared-parenting relationship, with the result that father was found to be more likely to honor mother's parenting time or visitation, R.C. 3109.04.

Custody/Legal/Medical care. In re J.R. | 2023-Ohio-2145 | 1st Appellate District | 06/28/2023 Award of legal custody of dependent child with a medical issue to maternal great-grandmother was not error where, inter alia, mother left child's care to nurses and showed no interest in working with medical staff, she refused to submit to drug tests, she failed to engage in case plan services and stopped visitation with child, and she removed child from home without taking medical equipment necessary to keep child alive, while great-grandmother had ability to adequately care for child, R.C. 2151.353(A)(3).

Paternity/Acknowledgement/Relief from judgment/Standing. In re E.B. | 2023-Ohio-2089 | 6th Appellate District | 06/23/2023 After mother and romantic partner executed a voluntary acknowledgment of paternity of child, in mother's subsequent action on behalf of child, seeking a finding of parent-child relationship between child and biological father, resulting in a judgment for partner, trial court erred in denying mother's Civ.R. 60(B)(5) motion for relief from judgment where mother and partner's voluntary acknowledgement of paternity had become final under R.C. 3111.27, mother did not timely rescind the acknowledgment of paternity, and relief from judgment was unavailable to her; however, mother did have standing to bring an action on behalf of child to determine if the acknowledgment of paternity should be set aside.

Custody/Guardian ad litem/Best interest analysis. In re K.S. | 2023-Ohio-1951 | 12th Appellate District | 06/12/2023 Award of legal custody of dependent child to maternal relatives was not error where conflict between child's wishes and guardian ad litem's recommendation did not require appointment of a new guardian ad litem because child's wishes were considered by the court and child understood that she could not be placed with mother, mother had lengthy history of substance abuse issues and did not demonstrate commitment to maintaining sobriety, and extension of temporary custody was not in child's best interest under R.C. 3109.04(F) due to mother's history of relapses, R.C. 2151.353; this opinion replaces and amends 2013-Ohio-

1936 by removing R.C. 2151.414(D) best interest analysis, and the court issues the same ruling in both opinions.

Delinquency/Motion to suppress/ Miranda warnings. In re O.E. | 2023-Ohio-1946 | 11th Appellate District | 06/12/2023 In an adjudication of juvenile as delinquent of adult rape, the juvenile court erred in denying motion to suppress since the totality of the circumstances demonstrate that the questioning of the juvenile was a custodial interrogation, and a reasonable child of appellant's age would not have felt free to leave during this questioning where the autistic 13 year-old boy was brought to a police station by his mother and was questioned while closed in a room alone with an armed detective for approximately an hour, and no Miranda warnings were given, In re T.W.

Delinquency. In re J.A.T. | 2023-Ohio-1854 | 11th Appellate District | 06/05/2023 In an adjudication of juvenile by admission as delinquent for committing the adult offense of rape, R.C. 2907.02(A)(1)(b), the juvenile court's classification of juvenile as a Tier II sexually-oriented offender was not plain error since juvenile's claim that the juvenile court improperly considered his delay in completing the sex offender program as a negative factor is without merit since his claim that the delay was due to his "diagnosed learning disability" is not supported by the record because the juvenile presented no evidence at the hearing indicating he was diagnosed with a learning disability or that any disability caused the delay in his completion of the sex offender program.

Delinquency/Jurisdiction/Venue. In re H.D. | 2023-Ohio-1849 | 12th Appellate District | 06/05/2023 In a delinquency proceeding filed in one county charging juvenile with being an unruly child, R.C. 2151.022(A), and with being a delinquent child for committing the theft of a motor vehicle, R.C. 2913.02(A)(1), juvenile's claim that the county in which she was in permanent custody had venue rather than the county in which the offense occurred is without merit since there was no pending proceeding against the juvenile in the county in which she was in custody and the alleged offense occurred in the county in which this delinquency proceeding was commenced and the witnesses are located in that county, Juv.R. 11(B) and (C) and R.C. 2151.271.

Custody. In re S.V. | 2023-Ohio-1805 | 9th Appellate District | 06/01/2023 Award of legal custody of children to father was not error where, although children expressed wishes to return to mother's custody, the credibility of their statements was questionable because mother had improperly influenced them in the past and mother failed to demonstrate the ability to meet children's daily needs, while children performed well in school when in father's custody but when removed from his care had disciplinary trouble at school, and father was found to be more likely to honor mother's right to parenting time, R.C. 3109.04.

Custody/Contempt/Attorney fees. Jourdan v. Jourdan | 2023-Ohio-1826 | 5th Appellate District | 05/31/2023 In custody dispute between parents where trial court found mother in contempt of court for moving to another state in violation of a court order and for willfully interfering with father and child's counseling, the court did not err in declining to award father attorney fees since he failed to comply with the court's order to submit invoices and an affidavit from counsel demonstrating that the fees were reasonable and customary; as well, in the motions father filed for contempt, he did not cite R.C. 3109.051(K), which requires payment of attorney fees, there is no indication the trial court used that statutory provision in its contempt determination, and when a trial court awards attorney fees pursuant to R.C. 3105.73(B), the award of attorney fees is within the trial court's discretion.

Custody/Notice/Juv.R. 40(D). In re S.D. | 2023-Ohio-1645 | 1st Appellate District | 05/17/2023 In custody action where mother challenged award of custody to father, trial court erred in divesting mother of legal custody in ex-parte trial where mother lacked notice of custody trial date because her only opportunity to be informed was statement during remote pretrial hearing with audio difficulties, magistrate did not confirm parties heard date and time for trial, and court failed to correct problem at objections hearing pursuant to Juv.R. 40(D).

Bindover. In re K.B. | 2023-Ohio-1644 | 1st Appellate District | 05/17/2023 In a juvenile delinquency proceeding in which the state alleged the juvenile was involved in two different shootings and associated robberies, juvenile was bound over to the trial court in one case, but not in a second case, and the state appealed the denial in the second case, the juvenile court erred in not binding over juvenile to adult court since the state presented sufficient credible evidence to demonstrate probable cause that the juvenile committed the acts as charged that would constitute felonies if committed by an adult since the victim testified that he had a personal relationship with the juvenile, and the victim made a photo identification of the juvenile.

Custody/Social connections. Davidson v. Hodge | 2023-Ohio-1638 | 1st Appellate District | 05/17/2023 In custody action in which mother challenged award of legal custody of children to father after children had lived with mother in a distant state, judgment is affirmed as being in children's best interest where children did not have any social connections in state of mother's residence, while they had existing friendships and were adjusted to school and community under father's care, and children were doing very well following return to father's home, R.C. 3109.04.

Custody/Tax dependent deduction. In re B.M. | 2023-Ohio-1567 | 8th Appellate District | 05/11/2023 In custody action in which father challenged modification of his child support obligation, trial court erred in finding that mother was entitled to claim both children as dependents for federal income tax deduction purposes since the parties stipulated on the record that father would claim one child as a dependent for tax purposes and mother would claim the other child, and R.C. 3119.82 provides that the designation must be in accordance with agreement between the parties.

Custody. In re O.D. | 2023-Ohio-1559 | 9th Appellate District | 05/10/2023 Award of permanent custody of children to agency was not error where father abandoned children by failing to contribute to their support or inquire about their well-being in months prior to the hearing, he made no effort to engage in case plan services to facilitate reunification, and he failed to participate in mental health counseling and substance abuse treatment, while children were placed with grandparents where their needs were met in a stable environment, R.C. 2151.414.

Custody/Shared parenting plan/ Modification. In re O.G.H. | 2023-Ohio-1555 | 1st Appellate District | 05/10/2023 In custody action in which father submitted a shared parenting plan, which

Juvenile (Continued)

the trial court adopted and which mother challenged, the court erred in modifying father's plan where only father filed a plan, pursuant to R.C. 3109.04(D); if the court determined that the proposed plan was not in the best interest of the child, the court was required to request that father file a modified shared parenting plan to address the court's concerns, and although the court could make suggestions for modifications, it was not authorized to create its own plan.

Custody. Collier v. Smith | 2023-Ohio-1553 | 1st Appellate District | 05/10/2023 In father's petition for custody of children, trial court did not err in finding a change of circumstances and in designating father as legal custodian where mother denied father's parenting time for months until unexpectedly ceding custody of children to him without contacting children or providing support, father repeatedly attempted to work with mother, but she did not demonstrate the same willingness, and children were settled in school and expressed a strong desire to live with father, R.C. 3109.04.

Delinquency. In re J.C. | 2023-Ohio-1501 | 1st Appellate District | 05/05/2023 In an adjudication by admission of juvenile as delinquent of three counts of adult rape, classification of juvenile as a juvenile offender registrant and a Tier II sex offender was not error where the juvenile court considered the relevant statutory provisions and made findings supported by the evidence in the record, including consideration of juvenile's witnesses and expert reports in which it was noted that he posed a "low to moderate range for future sexually acting out behavior," that he failed to recognize the behaviors that preceded his deviant sexual behaviors, that he would benefit from more treatment and, although there was expert testimony that the juvenile benefitted from outpatient services, the expert cautioned that treatment would take longer than other cases.

Labor and Employment

Termination/Arbitration/Collective bargaining agreement. Lorain v. Fraternal Order of Police, Lodge No. 3 | 2023-Ohio-2431 | 9th Appellate District | 07/17/2023 In city's action terminating officer's employment for submitting a forged certificate indicating that he passed an agility test to obtain transfer to another city police department, where arbitrator determined that termination was too severe a penalty, trial court did not err in denying police union's application to confirm arbitration award and in vacating arbitrator's award where the express terms of the parties' collective bargaining agreement (CBA) permitted termination of officer's employment pursuant to R.C. 124.34(A), and the arbitrator exceeded his authority because the award erroneously relied on mitigating factors rather than on the terms of the CBA.

Grievance/Mandamus/Adequate remedy. State ex rel. Casey v. Brown | 2023-Ohio-2264 | Supreme Court of Ohio | 07/06/2023 In relator-firefighter's mandamus action seeking to compel city to promote him to vacated position, court of appeals did not err in denying writ of mandamus since relator's claims are covered by the union's collective bargaining agreement with city, relator's grievance was advanced through procedure until union declined to pursue claim, and because the arbitration procedure provided in the collective bargaining agreement was an adequate remedy at law pursuant to R.C. 4117.10, relief in mandamus is precluded.

Contract/Non-compete/Administrative leave. Total Quality Logistics, L.L.C. v. Leonard | 2023-Ohio-2271 | 12th Appellate District | 07/03/2023 In original employer's breach of contract action against former employee who was currently employed by competitor, seeking enforcement of the parties' non-compete agreement, trial court erred in denying original employer's motion for summary judgment where employee was put on paid administrative leave by competitor after the parties entered into an agreed TRO, employee continued contacting customers of original employer, the non-compete agreement not only restricted employee from competing with original employer for customers, it also sought to prevent unfair competition for human resources necessary to conduct business, and employee met the criteria for being employed for purposes of agreement while on paid leave with competitor.

Discrimination/Arbitration. Ross v. Menards, Inc. | 2023-Ohio-2246 | 6th Appellate District | 06/30/2023 In employee's discrimination and retaliation action against former employers, trial court did not err in granting employers' motion to compel arbitration and to stay proceedings since employee's claims fell under the arbitration clause in employment agreement where the terms showed the unambiguous intention of the parties to extend the scope of the arbitration clause to cover statutory state-law claims, R.C. 2711.02(B), 2711.03(A).

Contract/Breach/Collective bargaining/Jurisdiction. Falconer v. Warrensville Hts. City School Dist. Bd. of Edn. | 2023-Ohio-2068 | 8th Appellate District | 06/22/2023 In plaintiff-school counselor's action against defendant-board of education, alleging breach of employment contract for unlawfully terminating his employment, trial court did not err in dismissing the complaint for lack of subject matter jurisdiction where plaintiff's claims were governed by the parties' collective bargaining agreement with education association, the agreement provided that arbitration was the exclusive remedy for violations of employee's rights under R.C. 4117.10(A), and plaintiff's employment contract arose from the collective bargaining agreement.

Wrongful termination/Public policy/Free speech. Hall v. Kosei St. Marys Corp. | 2023-Ohio-2021 | 3rd Appellate District | 06/20/2023 In at-will employee's action for wrongful termination in violation of free speech public policy following termination for publicly sharing a social media post that prompted at least three of employee's subordinates or coworkers to file complaints about the post with employer, trial court did not err in granting summary judgment to employer where legal precedent states that a wrongful discharge claim based on the public policy embodied in the freedom of speech provision in Ohio Const. Art. 1 Sec. 11 is without merit since the prohibitions contained therein apply only to state action, not the actions of a private citizen or employer.

Wrongful termination/At-will employee. Childs v. Kroger | 2023-Ohio-2034 | 10th Appellate District | 06/20/2023 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 his

employment for any reason not contrary to law, including his prior conviction.

Pandemic unemployment assistance. King v. Dir., Ohio Dept. of Job & Family Servs. | 2023-Ohio-1724 | 10th Appellate District | 05/23/2023 Dismissal of former worker's administrative appeal of unemployment compensation review commission's denial of his claim for pandemic unemployment assistance benefits was not error since worker's fear of exposure to virus at workplace was not a qualifying condition set forth in the benefits program under 15 U.S.C. 9021(a)(3)(A), and worker failed to demonstrate that a qualifying condition was the basis for his leaving work.

Suspension/Gag order. Tuscarawas Cty. Pub. Defender's Office v. Goudy | 2023-Ohio-1653 | 5th Appellate District | 05/16/2023 In administrative appeal of employee's removal from public defender's office on charges of insubordination, trial court did not err in affirming the decision of review board modifying employee's removal to suspension where human resources manager concluded that employee had spoken to her friend about the incidents, in violation of gag order, but even though manager's suspicions were reasonable, employee provided evidence that her friend knew about the incidents prior to the investigation and prior to the order not to disclose details.

Procedure

Prohibition/Jurisdictional priority/Whole-issue exception. State ex rel. Maron v. Corrigan | 2023-Ohio-2556 | Supreme Court of Ohio | 07/27/2023 Petition for a writ of prohibition to prevent judge from adjudicating declaratory judgment action against petitioner, in which petitioner is alleged to have interfered with an easement involving property that is a marital asset in petitioner's pending divorce action, is denied since the judge does not lack jurisdiction; petitioner admits that the judge has general jurisdiction over the types of claims in the instant declaratory judgment case, and her argument that the jurisdictional priority rule prevents the judge from exercising jurisdiction is without merit since the underlying divorce action and the instant declaratory judgment action do not involve the same parties, the same legal claims, or resolution of the same issues, and the whole-issue exception does not apply since petitioner has not shown how the judge's adjudication of the easement issue will conflict with the domestic-relations court's identification and division of marital property.

Summary judgment/Scope/Employment. Phillips v. Regina Health Ctr. | 2023-Ohio-2568 | 9th Appellate District | 07/26/2023 In employee's action against employer, alleging employer's failure to provide notice about her right to continue health care coverage when she left employment, trial court erred in granting summary judgment to employer since the court's ruling was outside the bounds of employer's motion for summary judgment, which focused on the assertion that employee was unable to establish damages, so the case is remanded; also, while employer was not required to notify employee of the right of health insurance continuation because employee terminated the employment relationship, there was evidence that employer did provide notice to employee, R.C. 3923.38(C)(2).

Prohibition/Evidence/Judicial notice/Authentication. State ex rel. Harris v. Bruns | 2023-Ohio-2344 | Supreme Court of Ohio | 07/12/2023 Denial of mother-relator's petition for a writ of prohibition to prevent juvenile court judge from awarding custody of her minor child to maternal grandfather, claiming that the juvenile court lacked jurisdiction, is affirmed since the parties did not submit evidence in accordance with the court of appeals' rules of practice, but instead relator attached exhibits to her complaint, with the result that there was no evidence to evaluate relator's prohibition claim where, inter alia, the court of appeals had discretion whether to take judicial notice of the exhibits, Evid.R. 201, no party asked the court to take judicial notice of the exhibits, filings in juvenile-court cases are not publicly available on the Internet, and none of the exhibits attached to relator's petition were authenticated by an affidavit; to properly authenticate noncertified documents under Evid.R. 901(B)(7), relator had to supply an affidavit attesting that the exhibits were authentic copies of the public records they purported to be.

Discovery/Attorney-client privilege. Cochran Ohio, L.L.C. v. Washington | 2023-Ohio-2212 | 2nd Appellate District | 06/30/2023 In plaintiff-law firm's action seeking an order for full production of documents in dispute over fees with clients, whose files were removed from firm by defendant-former associate, trial court erred in ordering production of documents subsequently generated for the same clients after defendant left firm; production of information related to defendant's compensation is generally not covered by attorney-client privilege, and in camera review should be conducted to determine which documents regarding settlement should be protected from disclosure due to privilege.

Procedendo/Vexatious litigator. State ex rel. M.D. v. Kelsey | 2023-Ohio-2165 | Supreme Court of Ohio | 06/30/2023 In divorce and civil protection order proceedings in which instant petitioner's prior request for a writ of procedendo was granted to order trial judge to rule on pending motions and to proceed promptly to final hearings, petitioner's motion to enforce the writ is denied where petitioner is asking the Ohio Supreme Court to issue an advisory opinion by requesting an order that future interlocutory appeals by opposing party in the underlying proceedings will not automatically divest the trial court of jurisdiction, and petitioner's enforcement motion does not account for the possibility that there could be a final appealable order under R.C. 2505.02; petitioner's alternative request for an order declaring opposing party to be declared a vexatious litigator under S.Ct.Prac.R. 4.03(B) is granted since the opposing party has used the court to engage in frivolous conduct for the purpose of delaying the proceedings before the trial judge and of thwarting the effect of the writ of procedendo, and opposing party is ordered to give notice of this decision to the court of appeals.

Refiling motion/Privileged information/Contempt. Doe v. Univ. Hosps. Health Sys., Inc. | 2023-Ohio-2120 | 11th Appellate District | 06/26/2023 In case originally filed against defendants-hospital, doctor and related personnel, where hospital's attorney represented all the defendants, and subsequently a dispute arose between the hospital and doctor, prompting doctor's attorney to file a motion to disqualify hospital's attorney and then to file an amended disqualification motion that redacted a patient's name, trial court erred in finding doctor's attorney to be in contempt of court for filing the amended motion in violation of the court's order related to protecting privileged and confidential information since the court's order does not explicitly direct doctor's attorney to refrain from refiling the amended motion, and the attorney's refiling was not unambiguously proscribed by the trial court's order.

Procedure (Continued)

Jurisdiction/Personal/Minimum contacts. Doors On-Line v. Chandra | 2023-Ohio-2018 | 3rd Appellate District | 06/20/2023 In door dealership's action against homeowner for failure to pay for installed garage door, trial court erred in finding that it had personal jurisdiction over nonresident homeowner where, even if homeowner transacted business in Ohio by placing order by telephone based on dealership's website, that single act was insufficient to establish the requisite minimum contacts with the state because homeowner's activities did not create a substantial connection to the state to make the exercise of jurisdiction over homeowner reasonable.

Vexatious litigator/Frivolous conduct. Stephens v. Downtown Property Mgt., Inc. | 2023-Ohio-1988 | 1st Appellate District | 06/16/2023 In plaintiff-former tenant's action against defendants-landlord and management company seeking damages for various alleged "harms" arising from her tenancy, summary judgment in favor of defendants was not error where trial court found plaintiff to be a vexatious litigator under R.C. 2323.52; in numerous complaints against defendants, plaintiff repeated arguments rejected in defendants' previous consolidated eviction and rent-escrow action against plaintiff, and plaintiff's conduct was frivolous under R.C. 2323.51 because the complaints were barred by res judicata.

Pleading/Privilege/Attorney-client. Stueber v. Ohio Turnpike & Infrastructure Comm. | 2023-Ohio-1813 | 8th Appellate District | 06/01/2023 In counsel's wrongful termination action against former employer, alleging that counsel was terminated for advice given and concerns raised regarding employer's contract awards process, trial court erred in denying employer's request to seal the complaint since the complaint included descriptions of legal advice that counsel had provided and employer's reaction to counsel's advice, so the allegations were subject to attorney-client privilege, and the use of sealing is appropriate to prevent further dissemination of privileged information.

Jurisdiction/Service/Waiver of defenses. Shannon Village Homeowners Assn. v. Miller | 2023-Ohio-1449 | 10th Appellate District | 05/02/2023 In plaintiff-homeowners association's foreclosure action against defendant-homeowner for failure to pay assessments imposed on property, resulting in summary judgment for plaintiff, trial court erred in denying defendant's motion to dismiss since service of the complaint was not properly made on defendant pursuant to Civ.R. 4.6(D), defendant properly raised and preserved the affirmative defenses of insufficiency of service and lack of personal jurisdiction by asserting them in the first responsive pleading, and defendant's filing of counterclaims did not constitute waiver of the affirmative defenses under Civ.R. 12(H)(1).

Appeal. Mangan v. Morocho & Garcia Constr., L.L.C. | 2023-Ohio-1452 | 10th Appellate District | 05/02/2023 After employee was struck by a beam and killed on construction project, in plaintiff-estate administrator's multi-claim and multi-party action, including negligence and workplace intentional tort claims against defendant-owner of subcontractor, that resulted in a default judgment, defendant's appeal is dismissed for lack of jurisdiction where, although trial court's judgment declared that it was a final appealable order, not all the claims were resolved, and court's judgment did not contain Civ.R. 54(B) language to make the order final and appealable, R.C. 2505.02.

Judge disqualification/Deadline/Excuse standard. In re Disqualification of Schroeder | 2023-Ohio-2166 | Supreme Court of Ohio | 05/01/2023 Affiant-prosecuting attorney's affidavit of disqualification, R.C. 2701.03, seeking to disqualify judge from presiding over a death-penalty case on remand from federal court is dismissed, her motion for leave to file her affidavit of disqualification "out of rule" is denied, and her motion to supplement the affidavit of disqualification with additional pleadings relating to the death-penalty case is dismissed as moot where affiant failed to comply with the statutory deadline for filing an affidavit of disqualification pursuant to R.C. 2701.03(B) and affiant has not included in her affidavit of disqualification factual averments explaining why it was impossible to comply with the deadline, which is the standard for excusing a failure to comply with the statutory seven-day requirement, rather than a "good cause" standard.

Professional Responsibility

Disbarment. Disciplinary Counsel v. Poole | 2023-Ohio-2111 | Supreme Court of Ohio | 06/27/2023 Attorney is permanently disbarred from the practice of law where prior disbarment in another state was considered.

Suspension. Disciplinary Counsel v. Purola | 2023-Ohio-1768 | Supreme Court of Ohio | 05/30/2023 Attorney is suspended from the practice of law for six months, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Stobbs | 2023-Ohio-1719 | Supreme Court of Ohio | 05/25/2023 Attorney is suspended from the practice of law for 18 months, with 12 months stayed on conditions.

Suspension. Disciplinary Counsel v. Norton | 2023-Ohio-1740 | Supreme Court of Ohio | 05/24/2023 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Reinstatement. Lorain Cty. Bar Assn. v. Nelson | 2023-Ohio-1585 | Supreme Court of Ohio | 05/12/2023 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. Reed | 2023-Ohio-1420 | Supreme Court of Ohio | 05/02/2023 Attorney is suspended from the practice of law for an indefinite period, with credit for time served under an interim suspension, and with conditions on reinstatement.

Public and Public Finance

Public records/Nonexistent records/Criminal records/Damages. State ex rel. Ware v. Parikh | 2023-Ohio-2536 | Supreme Court of Ohio | 07/26/2023 Denial of public records requester's petition for a writ of mandamus to compel the clerk of courts to provide public records and for statutory damages is affirmed where, inter alia, requester made 10 requests, eight of which were fulfilled after the mandamus petition was filed, and as to the first of two other requests, requester did not present evidence showing that the clerk had any records matching the description provided, and as to the other request, which was for records concerning requester's criminal prosecution, the clerk had no duty to give them to requester without the sentencing judge's approval, R.C. 149.43(B)(8); also, where requests were sent in envelopes on the same day, to the same office, and concerned the same general subject matter, requester's mailings are construed as a single records request, and requester is entitled to only one

single damages award of $700, R.C. 149.43(C)(2).

Public records. State ex rel. Atakpu v. Shuler | 2023-Ohio-2266 | Supreme Court of Ohio | 07/06/2023 In inmate's pro se mandamus action to compel the production of records in response to a request pursuant to R.C. 149.43 of the Ohio Public Records Act, court of appeals granted the writ to a limited extent and did not err by denying relator's requests for statutory damages and court costs since the public employee's actions met the requirements for declining to award damages pursuant to R.C. 149.43(C)(2)(a) and (b) where she reasonably believed that she had complied with the requirements of R.C. 149.43(B), but inadvertently provided the wrong documents and did not act in bad faith in doing so.

Open Meetings Act/Notice. Ames v. Geauga Cty. Invest. Advisory Commt. | 2023-Ohio-2252 | 11th Appellate District | 06/30/2023 In plaintiff's action alleging that defendant-county investment advisory committee held meetings without providing public notice, in violation of the Open Meetings Act, summary judgment in favor of defendant was not error where defendant was a committee of board of commissioners under R.C. 121.22(B)(1)(b), rather than an independent public body, defendant's meetings constituted public meetings of the board under R.C. 121.22(B)(2) because the majority of committee members originated from the board, and the board complied with the notice requirement under R.C. 121.22(F), including emailing the agenda of meetings to all subscribers on a distribution list or by self-addressed stamped envelope provided by the person requesting the information.

Open Meetings Act/Legal opinion . State ex rel. Kovoor v. Trumbull Cty. Bd. of Elections | 2023-Ohio-2256 | 11th Appellate District | 06/30/2023 Denial of candidate's petition for a writ of mandamus seeking a declaration that board of elections' action in requesting a legal opinion was invalid under the Open Meetings Act (OMA) and also seeking an injunction requiring the board to comply with the OMA is affirmed since the board was engaged in information gathering when it sought a legal opinion from the prosecutor, which is an activity that does not constitute a "meeting" for purposes of the OMA; public officers have the right to seek and receive advice and opinions from their legal advisor, and the request for a legal opinion was not an "official action" under the OMA because it was not part of the board's enumerated statutory duties, but rather was an information-gathering activity.

Utility bills/Arbitration. Yoby v. Cleveland | 2023-Ohio-2180 | 8th Appellate District | 06/29/2023 In citizens' class action against city, questioning whether the city was authorized to assess certain adjustments on citizens' electric bills, trial court erred in denying city's motion to stay proceedings and to compel arbitration where there are questions of material fact whether the parties ever agreed to arbitrate and whether the arbitration clause exists, and under R.C. 2711.03(B), the trial court was required to proceed to trial on that issue.

Property forfeiture/Res judicata/Plea agreement. Banks v. Toledo | 2023-Ohio-1906 | 6th Appellate District | 06/02/2023 In plaintiff's claim for property forfeited to city as the result of a plea agreement after seizure of property pursuant to a search warrant in a criminal case against another individual, trial court erred in denying plaintiff's claim on reasoning that the prior forfeiture proceeding, in which plaintiff was denied intervention, operated as res judicata to plaintiff's complaint to recover property where no statutory forfeiture was adjudicated as to any person, only the signatories to the plea agreement consented to forfeiture by plea agreement, and the trial court erred by relying on the statutory notice provisions to find that plaintiff had waived any interest to the property pursuant to the plea agreement.

Public records/Pleading. Jones v. Allen Cty. Common Pleas Court | 2023-Ohio-1863 | Court of Claims | 05/30/2023 In public records request action, special master recommends dismissal for failure to state a claim where requester made a request from the clerk of courts office but sued the court, so a request to the clerk does not establish that requester was aggrieved by the court, the only respondent sued here, and the claim fails as a matter of law, R.C. 2743.75(D)(2).

Police officer/Termination/Rule of conduct. Wortham v. Dayton | 2023-Ohio-1767 | 2nd Appellate District | 05/26/2023 Termination of city police officer in an administrative proceeding by the city civil service board that was affirmed in an R.C. Ch. 2506 administrative appeal to the common pleas court was not error since the police department's rule of conduct requiring termination for making a false statement, regardless of its seriousness, is lawful because the ability of an officer to testify and perform some of the essential duties of an officer is hampered by a finding that an officer lied since that information would have to be affirmatively disclosed to defense counsel if the officer was going to testify in a criminal matter, Brady and Giglio.

Transcripts/Damages/Jurisdiction. Brown v. State | 2023-Ohio-1725 | 10th Appellate District | 05/23/2023 In an action for damages against state that purportedly arose from a trial court's prior denial of public records request for transcripts in a criminal case, court of claims did not err in dismissing complaint where, although courts in each county are state courts and instrumentalities of state, the state's waiver of immunity from liability under R.C. 2743.02(A) does not extend to a common pleas court named as defendant under the definitions in R.C. 2743.01, and thus court of claims lacked jurisdiction over complaint, Cotten.

Public records. Rose v. Ohio Dept. of Commerce | 2023-Ohio-1856 | Court of Claims | 05/17/2023 In requester's action alleging that he had been denied access to public records regarding specific mobile home park's compliance with legal requirements, special master's report and recommendation is adopted and respondent is ordered to produce all responsive public records that have not yet been produced where request was not overly broad or ambiguous and respondent understood the context of the request and which records were responsive, R.C. 2743.75, 149.43(B).

Public records/Equivalent of public office. State ex rel. Harm Reduction Ohio v. OneOhio Recovery Found. | 2023-Ohio-1547 | Supreme Court of Ohio | 05/11/2023 Petition for a writ of mandamus by relator-nonprofit organization to compel respondent-foundation to provide records of respondent's meetings is granted since respondent is the functional equivalent of a public office where respondent is operating under an agreement with state and local governments to help allocate Ohio's share of national opioid litigation settlement proceeds, and subjecting respondent to the requirements of the Public Records Act is consistent with the Act's policy of governmental openness, but relator's request for statutory damages and attorney fees is denied on

Public and Public Finance (Continued)

reasoning that a well-informed person responsible for respondent's records could have reasonably believed that respondent was a private corporation not subject to the Act; also, future private entities situated similarly to the respondent should be guided by the analysis in the instant decision, and a well-informed person may draw a different conclusion in the future.

Public records/Statutory damages/ Request intention. State ex rel. Straughter v. Ohio Dept. of Rehab. & Corr. | 2023-Ohio-1543 | Supreme Court of Ohio | 05/10/2023 Inmate's petition for a writ of mandamus to compel state department to provide public records of prison kites is denied as being moot since the kites were provided to inmate several months after he filed the instant action; however, the petitioner is entitled to the maximum statutory damages, R.C. 149.43(C)(2), where the state department does not dispute that it breached its obligations under the Public Records Act, the length of time between the date petitioner filed the mandamus action and the date the records were provided supports the maximum award, and the state department did not demonstrate that petitioner made his requests solely with the expectation that they would be denied and that he could then collect statutory damages.

Public records/Create record/ Jurisdiction. Martin v. New Philadelphia Police Dept. | 2023-Ohio-1862 | Court of Claims | 05/09/2023 In public records request action, special master's recommendation to dismiss the complaint is adopted by the court on reasoning that requester asked police department to create a new record or to modify an existing record, which is not required; since the requested record is not an existing record, special master's reasoning that the Court of Claims lacked subject-matter jurisdiction is misplaced since the Court of Claims has exclusive, original jurisdiction under R.C. 2743.75 to hear complaints alleging a denial of access to public records in violation of R.C. 149.43(B), and if subject-matter jurisdiction were lacking in this case, the court could not issue a ruling on the merits of the case.

Public records/Death records. Standifer v. Ohio Dept. of Health | 2023-Ohio-1855 | Court of Claims | 05/04/2023 In public records requester's action seeking to compel respondent-department of health to provide information about all deaths in the state during a specified period, special master's recommendation to grant the claim for production of the requested death database is not adopted by the court since, under Walsh and Ludlow, the requester is seeking health information that is protected under R.C. 3701.17 and that is excluded from the definition of public records under R.C. 149.43, and respondent may not legally disclose the protected information, R.C. 2743.75.

Public records/Duty to organize. Ogle v. Hocking Cty. Sheriff | 2023-Ohio-1446 | 4th Appellate District | 05/01/2023 Public records requester's petition for a writ of mandamus to compel county sheriff to produce records is denied where, inter alia, the request for records organized by date and time would require sheriff to create a new index of the documents to be able to retrieve them in the manner requested, such an index would constitute a new record or type of record, and the sheriff is not legally required to create a new index or record in order to comply with a public records request, R.C. 149.43(B)(2); sheriff's organization by report number, name of individual involved, and address or area, is sufficient to comply with his duty to organize and maintain public records.

Public Utilities

Wind farm/Environmental compatibility/ Public need. In re Application of Firelands Wind, L.L.C. | 2023-Ohio-2555 | Supreme Court of Ohio | 07/27/2023 The order of the power siting board issuing applicant a certificate of environmental compatibility and public need to construct a wind farm in two counties is affirmed since the wind farm satisfies the statutory requirements for constructing a major utility facility where the board properly determined the nature of the probable environmental impact, that the facility represents the minimum adverse environmental impact, and that the facility will serve the public interest, convenience and necessity, pursuant to R.C. 4906.10, and residents' challenges failed to establish that the board's order was unlawful or unreasonable, including, for example, residents' assertion that the board erred by allowing wind turbines to be placed in a karst plain, where applicant entered into a stipulation with the requirement to submit detailed engineering drawings, accounting for karst topography, to the board's staff for approval before construction could commence.

Solar facility/Zoning. Woodstock Solar Project, L.L.C. v. Rush Twp. Bd. of Zoning Appeals | 2023-Ohio-2215 | 2nd Appellate District | 06/30/2023 In energy project's application for conditional use permit to build solar facility in township, trial court did not err in reversing decision of board of zoning appeals rejecting application where the court was authorized under R.C. 2506.04 to reverse board's decision without remanding for further argument, and facility was found to be public utility pursuant to R.C. 519.211 because it would provide considerable power for public consumption and would conduct operations in such a manner as to be matter of public concern.

Real Property

Appropriation/Access to property/ City permit/Attorney fees. State ex rel. Balunek v. Marchbanks | 2023-Ohio-2517 | Supreme Court of Ohio | 07/25/2023 Relator-property owner's petition for a writ of mandamus to compel respondents-state department and director to institute appropriation proceedings for the taking of relator's real property as part of roadway-construction project is granted since the project rendered relator's property inaccessible from any road, and respondents' argument that appropriation is not needed because relator could obtain a city street opening permit is without merit where there is no evidence that the property actually meets the permit requirements or that relator would "likely" get the permit; also, the writ does not apply to relator's property interests for which respondents have already instituted appropriation proceedings in another court, and relator's request for attorney fees is denied since they are not available in mandamus actions to compel appropriation proceedings.

Easement/Trespass/Appeal/Remand. Olive Oil, L.L.C. v. Cleveland Elec. Illum. Co. | 2023-Ohio-2487 | 8th Appellate District | 07/20/2023 In plaintiff-property owner's trespass action against defendant-power company for moving power lines to span over a larger portion of plaintiff's parking lot, without his permission, trial court erred on remand in dismissing the claim in contravention of a special mandate requiring the trial court to make a determination whether defendant acquired a prescriptive easement, whether the new wires impermissibly exceeded the scope of

any such easement, and the measure of damages resulting from any trespass.

Appropriation/Appeal/Final order. Mill Creek Metro. Park Dist. Bd. of Commrs. v. Less | 2023-Ohio-2332 | Supreme Court of Ohio | 07/11/2023 In park district's action to appropriate owner's private property for development of recreational bikeway in which the trial court denied owner's motions for summary judgment, court of appeals lacked jurisdiction to hear appeal by owner since the trial court orders were not final appealable orders under R.C. 2505.02(B)(7) and 163.09(B)(3) where the owner answered the appropriation petition by denying the district's authority to appropriate the property and by denying the necessity of the appropriation, and the trial court did not determine those issues in its summary-judgment ruling; the court of appeals' judgment is vacated and cause is remanded to the trial court for further proceedings.

Partition/Attorney fees. Brown v. Pannell | 2023-Ohio-2231 | 9th Appellate District | 06/30/2023 In plaintiffs-heirs' action against defendant-decedent's sister seeking partition of decedent's property and attorney fees, judgment in favor of plaintiffs was not error where trial court had authority to award attorney fees to plaintiffs' counsel in accordance with equity, pursuant to R.C. 5307.25, and award of attorney fees was based on a detailed accounting of services rendered; as well, defendant's motion for a continuance was correctly denied because she had notice of the trial date and waited until the day of trial to file the motion.

Landlord-Tenant/Relief from judgment/ Notice. Holman v. White Pond Villa Apts. | 2023-Ohio-2221 | 9th Appellate District | 06/30/2023 In tenant's action against landlord seeking necessary repairs to uninhabitable apartment, trial court erred in granting landlord's motion for relief from judgment based on lack of service where tenant complied with plain language of R.C. 5321.07 in escrowing rent and seeking rent abatement until repairs were completed, she followed procedure to provide notice to landlord concerning its noncompliance, and tenant was not required to provide service to landlord via certified mail in order to initiate proceeding.

Boundary dispute/Settlement agreement. In re Roudebush Trust | 2023-Ohio-2281 | 7th Appellate District | 06/28/2023 In plaintiffs-property owners' action against defendants-trust holding neighboring property and trust beneficiaries, arising from the parties' dispute about the location of driveway and seeking a declaration of the property boundaries, resulting in a second settlement agreement, trial court erred in approving the agreement since the agreement provided no benefit to the trust beneficiaries, who were not parties to the agreement, but were required to release their claims against plaintiffs, and the trust was required to cede its claim to, and relocate, a portion of driveway on disputed area and to release oil and gas royalties to plaintiffs as reimbursement of advanced expenses for relocation

Mineral interests/Dormant Minerals Act/Notice. Toma v. Devaul | 2023-Ohio-2163 | 5th Appellate District | 06/28/2023 In plaintiffs-surface owners' action seeking declaration that defendants' reservation of mineral rights in property was abandoned under the Dormant Minerals Act, summary judgment in favor of defendants was not error where plaintiffs failed to thoroughly investigate information in their possession concerning the residence of mineral-rights holders and therefore their search was not considered reasonably diligent pursuant to R.C. 5301.56, and thus they were not entitled to pursue notice via publication because the plaintiffs' search was not diligent.

Landlord/Tenant/Relief from judgment. McClain v. Alexander | 2023-Ohio-2007 | 6th Appellate District | 06/16/2023 In landlord's action against tenant for eviction and for back rent owed, where tenant was awarded damages based on her counterclaims, trial court did not err in denying landlord's motion for relief from judgment where neither landlord nor counsel appeared for trial after notice was successfully sent, counsel's failure to appear and represent landlord was not excusable neglect under Civ.R. 60(B)(1) or inexcusable neglect under Civ.R. 60(B)(5) because neither landlord nor counsel explained the alleged lack of notice or, within the time between the trial and issuance of judgment, confirm whether the trial had gone forward or what the results were.

Tax foreclosure/Excess proceeds. Cuyahoga Cty. Treasurer v. Unknown Heirs of Russell | 2023-Ohio-1976 | 8th Appellate District | 06/15/2023 In county treasurer's tax foreclosure action against heirs and bank due to a failure to pay real-estate taxes for several years, resulting in sale of the property at sheriff's sale, trial court did not err in denying bank's motion for distribution of excess sale proceeds where bank failed to answer or otherwise assert interest in the subject property during the foreclosure action, confirmation of sale extinguished bank's interest in the property, and bank failed to present evidence that it obtained a valid judgment on the subject note.

Lease/Breach. Chilli Assocs. Ltd. Partnership v. Denti Restaurants, Inc. | 2023-Ohio-1978 | 4th Appellate District | 06/13/2023 In property owner's breach of contract action against commercial lessee for failure to pay rent, summary judgment in favor of owner was not error where the parties' ground lease did not require lessee to build a restaurant on the property but provided that any improvements would be property of the owner on termination of the lease, the value of the restaurant was not a benefit to the owner that must be offset against damages, and lessee failed to show that owner's efforts to mitigate damages were unreasonable.

Purchase agreement/"as is" clause/ Fraud. Enger v. Black | 2023-Ohio-1932 | 9th Appellate District | 06/12/2023 In home buyers' action alleging fraud against seller for failure to disclose that well water was contaminated, summary judgment in favor of seller was error where an "as is" clause in a real estate purchase agreement cannot be relied upon to bar a claim for fraudulent misrepresentation or fraudulent concealment, and the question remained as to whether seller's representation on disclosure form regarding problems with water supply or quality of water was false, R.C. 5302.30.

Foreclosure/Real party in interest. U.S. Bank Natl. Assn. v. Smith | 2023-Ohio-1940 | 7th Appellate District | 06/12/2023 In foreclosure action in which plaintiff-bank acquired original plaintiff-bank, acting as trustee, and alleged that defendants defaulted on note, mortgage and forbearance agreement, resulting in sale of the property and distribution of proceeds, trial court did not err in denying defendants' second Civ. R. 60(B) motion for relief from judgment

that distributed proceeds to plaintiff where, although plaintiff was not named in the foreclosure order, the trust was the real party in interest from the time the complaint was filed and plaintiff was acting as trustee; also, defendants' Governors argument was barred by res judicata because the argument could have been raised in defendants' original Civ.R. 60(B) motion.

Lake/Restrictive covenants/Dam maintenance. CAK Ventures, L.L.C. v. 1690 Timber Lake, L.L.C. | 2023-Ohio-1926 | 5th Appellate District | 06/09/2023 In claim by owner of property on which defective dam is located, seeking a declaration of the rights and obligations of the parties under a lake restrictions document governing the use of the lake by owners of shoreline property, and requesting contribution to maintain the dam, trial court's ruling that the restrictions do not require the permanence of the lake is affirmed where repair of the dam, resulting in lowering or draining of the lake, relates to state department's order, rather than property owner's own actions, and the lake restrictions do not require the owners of shoreline property to contribute to the maintenance of the dam.

Appropriation/Settlement/Mistake/Enforcement. Marchbanks v. Ice House Ventures, L.L.C. | 2023-Ohio-1866 | Supreme Court of Ohio | 06/08/2023 In plaintiff-department of transportation's action to appropriate a portion of defendants' property for improvement of highway where the parties reached a settlement agreement regarding compensation to defendants, but plaintiff was unable to meet its compensation obligation under the agreement to transfer a small parcel of parking spaces to defendants, triggering the trial court's continuing jurisdiction to determine "damages," the court of appeals erred in reasoning that there was no meeting of the minds on the meaning of "damages" to rule that the settlement agreement was unenforceable; disagreement about how to construe the term "damages" does not support a finding that the parties made a material mistake about a basic assumption on which the contract was made, and plaintiff is not entitled to rescission.

Foreclosure/Excess funds/Confirmation of sale/Appeal. JPMorgan Chase Bank v. Loseke | 2023-Ohio-1893 | 8th Appellate District | 06/08/2023 In bank's successful foreclosure action against borrower, resulting in sale of the property which generated excess funds, where bank failed to file a motion for reimbursement of advances for real estate taxes and insurance payments within 21 days of the sale, as ordered in the decree of foreclosure, and the trial court issued an order confirming the sale, the trial court erred in granting bank's Civ.R. 60(B) motion for relief from the confirmation of sale judgment entered eight months prior since it was a final appealable order and failure to file a timely appeal constitutes a waiver of issues that could have been raised in an appeal; the bank failed to timely move for reimbursement of advances pursuant to the decree of foreclosure; also, the court erred in denying borrower's motion for distribution of excess funds pursuant to R.C. 2329.44.

Eviction/Prohibition/Jurisdiction. State ex rel. Allenbaugh v. Sezon | 2023-Ohio-1754 | Supreme Court of Ohio | 05/30/2023 In a forcible entry and detainer action resulting in a summary judgment for property owner, with the tenants dismissing an appeal when the parties reached a settlement, followed by owner's motion to enforce the settlement that prompted tenants to file in the court of appeals the instant petition for a writ of prohibition asserting that the trial court was divested of jurisdiction when the appeal was filed and did not regain jurisdiction over the case because the case was not remanded, the Ohio Supreme Court holds that the court of appeals did not err in dismissing the petition since, absent a stay, the trial court retained jurisdiction to enforce its judgment after the notice of appeal was filed, and the tenants have an adequate remedy at law by way of appeal of the trial court's decision.

Eviction/Counterclaims/Jurisdiction. Acosta v. Rubalcava | 2023-Ohio-1794 | 11th Appellate District | 05/30/2023 In landlord's forcible entry and detainer action against tenants for failure to pay rent, judgment in favor of landlord was error where tenants' counterclaims exceeded the monetary jurisdiction limit of municipal court, requiring transfer of the case to common pleas court, R.C. 1901.22(E) and Civ.R. 13(J), but the case was not removed from municipal court, tenants' counterclaims were fundamentally related to the forcible entry and detainer action and could not be decided separately, and tenants' rights were violated under R.C. 1923.061(A) because they were not allowed to defend their interests at trial.

Zoning/Use variance. Mt. Lookout Community Council v. Cincinnati | 2023-Ohio-1729 | 1st Appellate District | 05/24/2023 In plaintiff-community council's administrative appeal of decision of board of zoning appeals granting use variance permitting intervenors-developers to demolish buildings, trial court erred in affirming board's decision where municipal zoning code's use schedules do not include construction or demolition because they are not purposes for which land is used, and any uses not listed in schedule are prohibited under code.

Partition/Affirmative defenses/Ownership interest. Bordenkircher v. Baker | 2023-Ohio-1770 | 5th Appellate District | 05/24/2023 In plaintiff's petition for partition of real estate she owned with defendant, trial court erred in granting plaintiff's motion for judgment on the pleadings and issuing writ of partition and order of sale where defendant raised affirmative defenses including judicial estoppel and accord and satisfaction, and questions remain as to whether plaintiff agreed to be removed from deed following defendant's repayment of her half of down payment on property and whether plaintiff has ownership interest in property.

Zoning/Nuisance/Trespass/Search warrants. Blanchard Twp. Bd. of Trustees v. Simon | 2023-Ohio-1704 | 3rd Appellate District | 05/22/2023 In township's action against property owner, alleging claims for zoning-injunctive relief and requesting the trial court to declare the property a nuisance under R.C. 505.87 and 505.871, prompting owner to file a counterclaim, asserting, inter alia, that township violated his civil rights by trespass under 42 U.S.C. 1983, trial court did not err in granting summary judgment to township since search warrants issued to zoning inspector and other officials, even though invalid as not being issued upon the request of a prosecuting attorney or a law enforcement officer, Crim.R. 41, were not deficient for purposes of an administrative search where the evidence presented to the trial court in support of the search warrants demonstrated reasonable grounds, any violation of Crim.R. 41 was

nonfundamental, and the exclusionary rule did not apply.

Title company/Breach of contract and fiduciary duty. Hoffman v. Atlas Title Solutions, Ltd. | 2023-Ohio-1706 | 3rd Appellate District | 05/22/2023 In property buyer's breach of contract and breach of fiduciary duty action against title company after purchase price was wired to incorrect recipient using information in spoof email, trial court erred in granting summary judgment in favor of defendant where, although there was no written contract between parties, question remains as to whether defendant entered into and breached implied agreement for escrow services, and economic-loss rule does not preclude breach of fiduciary duty claim.

Fraudulent misrepresentation/ Disclosure form. Thackston v. Zembower | 2023-Ohio-1690 | 7th Appellate District | 05/18/2023 In home buyers' fraudulent misrepresentation action against seller for failure to disclose condition of foundation, summary judgment in favor of defendant was error where plaintiffs relied on property disclosure form and defendant failed to disclose prior flooding and condition of foundation, defendant did not deny failure to disclose material facts, and question remains as to whether defendant had prior knowledge of issues and whether he was reckless in nondisclosure, R.C. 5302.30(K).

Annexation/Divided road/Maintenance. Eaton Twp. Bd. of Trustees v. KNG, Ltd. | 2023-Ohio-1621 | 9th Appellate District | 05/15/2023 In township's appeal of decision of board of commissioners to allow developer's annexation of village land for a residential development project, trial court erred in affirming the board's decision since annexation would result in a road being divided by the boundary line between township and village, and village's adopted ordinance for maintenance of the road failed to comply with R.C. 709.033(A)(6) because it did not include language that it would assume maintenance of the road as a condition of annexation.

Ownership/Arbitration/Waiver. Gerston v. Parma VTA, L.L.C. | 2023-Ohio-1563 | 8th Appellate District | 05/11/2023 In trustee's action seeking a declaration that the trust was the owner of appellee, one of the companies formed for the purpose of selling commercial property held as tenants in common with appellant-business partner, resulting in arbitration awards for appellant, trial court erred in granting appellee's motion to vacate the arbitration awards where, although appellant was previously determined to have waived the right to arbitration by litigating issues, the current cash call issue was only tangentially related and not previously litigated, so appellant did not waive the right to arbitration of issue.

Taxation

Real property/Agricultural use. Dalton G. Bixler 2016 Trust v. Tuscarawas Cty. Bd. of Revision | 2023-Ohio-2455 | 5th Appellate District | 07/18/2023 Board of tax appeals' decision affirming the board of revision's (BOR) determination that taxpayer's property no longer qualified for the Current Agricultural Use Value property tax program was error where a vineyard is operated on taxpayer's related parcel, and the parcels in question are used for wine processing and for storage of a wine press and bottles at various stages of the wine-making process, which all qualify as agricultural use under R.C. 1.61, which applies by express terms to the term "agricultural" in R.C. 5713.30 to show that taxpayer was entitled to agricultural use status.

Real property/Appeal. Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision | 2023-Ohio-2020 | 3rd Appellate District | 06/20/2023 In school board's appeal of board of revision's decision declining to increase the valuation of taxpayer's real property for the tax year in question, board of tax appeals erred in dismissing the appeal on reasoning that recently-amended R.C. 5717.01, which substantially restricts the right of a board of education to appeal to the board of tax appeals, precluded the school board's appeal since the amended version of R.C. 5717.01 does not expressly mention retroactivity and therefore does not apply to the current appeal, which was filed with the board of tax appeals prior to the effective date of the new version of the statute.

Real property/Taxable value/Appeal/ Review. Archon Capital, L.P. v. Cuyahoga Cty. Bd. of Revision | 2023-Ohio-1750 | 8th Appellate District | 05/25/2023 In property owners' action seeking reductions of taxable value of properties, trial court erred in affirming decisions of board of revision that found no change in valuations where judgment entries indicated only parties' appellate briefs were reviewed by trial court rather than the entire administrative record in each case as required by R.C. 5715.05.

Torts

Medical malpractice/Evidence/ Correlation with treatment. Hounchell v. Durrani | 2023-Ohio-2501 | 1st Appellate District | 07/21/2023 In plaintiffs' action against defendants-physician and clinic seeking damages for negligent treatment and for failure to obtain informed consent, resulting in a judgment for plaintiffs, trial court erred in denying defendants' Civ.R. 59 motion for a new trial where evidence asserted by plaintiffs about physician's license revocation, privilege suspension, and prior malpractice lawsuits should not have been admitted because plaintiff-patient failed to correlate physician's license revocation and related actions to her treatment or to provide context for those actions, and any probative value of that evidence was outweighed by the danger of unfair prejudice, Evid.R. 403(A) and 404(B).

Negligence/Governmental immunity/ Exception. Hines v. Cleveland | 2023-Ohio-2488 | 8th Appellate District | 07/20/2023 In plaintiffs' negligence action against defendant-city for injuries sustained in vehicle collision with city-operated garbage truck, denial of governmental immunity was error where plaintiffs failed to demonstrate that truck driver acted negligently, as an exception to immunity under R.C. 2744.02(B)(1), because statutory law does not mandate any particular method of making right turns, and truck driver had the right-of-way and was unaware of plaintiffs' encroachment into lane, R.C. 4511.28(A).

Slip and fall/Discovery/Privilege. Besack v. Kroger Co. | 2023-Ohio-2497 | 10th Appellate District | 07/20/2023 In plaintiff's slip and fall negligence action against defendant-grocery store for injuries sustained when he slipped on produce and fell, trial court erred in denying plaintiff's motion to compel discovery of defendant's incident report where evidence showed that defendant prepared the incident report in the ordinary course of business and therefore the documents were not protected by the attorney-client privilege, and nothing in the record suggests that the report was prepared in anticipation of litigation to qualify for the attorney work-product doctrine under Civ.R. 26(B)(3).

Defamation/Public figure. Holtrey v. Wiedeman | 2023-Ohio-2440 | 12th Appellate District | 07/17/2023 In plaintiff-teacher's defamation action against defendant for making false accusations, asserting that defendant linked plaintiff to an earlier scandal involving athletic boosters, which prevented plaintiff from being hired as basketball coach, trial court did not err in denying defendant's motion for summary judgment where plaintiff was a private person, rather than a limited-purpose public figure, even though he previously may have been a public figure with regard to investigation of the scandal, and defendant did not establish qualified privilege because the evidence showed that his publication was made with the clear intention of preventing plaintiff from being hired.

Design and construction/Statute of repose/Trespass. Gosser v. Warren Cty. Engineer's Office | 2023-Ohio-2439 | 12th Appellate District | 07/17/2023 In plaintiff-homeowner's negligence and trespass action against defendants-developer and builder for damage due to water diverted to property, summary judgment in favor of defendants on plaintiff's defective design and construction of water management system claims was not error since those claims were made outside the statute of repose, R.C. 2305.131, and plaintiff's related claim of continuing trespass was therefore of no merit; however, the trial court erred in granting summary judgment to defendants on plaintiff's trespass claim related to piling excavation dirt on adjoining property, which caused water to intrude on plaintiff's property, since this claim was filed within the applicable statute of limitations, R.C. 2305.09, which applies to trespass and other torts.

Medical malpractice/Jury instructions/ Same juror rule. Hild v. Samaritan Health Partner | 2023-Ohio-2408 | 2nd Appellate District | 07/14/2023 In plaintiff-administrator's medical malpractice and wrongful death action against medical defendants for treatment which allegedly led to decedent's death, resulting in a judgment for defendants, trial court erred in denying plaintiff's Civ.R. 59(A) motion for new trial where jury instructions and interrogatories, which stated that jurors who disagreed with a finding of negligence on the part of CRNA-defendant were not qualified to participate in deliberations on proximate cause, were issued in error, and the error was not harmless because the "same juror" rule, which provides that a verdict is invalid unless the same jurors agree on all the issues—used in comparative negligence cases—did not apply, and plaintiff was denied the right to a full jury to determine every issue.

Negligence/Governmental immunity. Mencini v. Greater Cleveland Regional Transit Auth. | 2023-Ohio-2299 | 8th Appellate District | 07/06/2023 In plaintiffs' negligence action against defendants-transit authority and driver for injuries sustained when their vehicle collided with bus, trial court erred in denying driver's motion for summary judgment where driver was a political subdivision employee, immune from liability under R.C. 2744.03(A)(6), because there was no allegation that he acted in a wanton or reckless manner to establish an exception to immunity, and allegations that driver was negligent and careless did not rise to the level of recklessness under the statute; however, the transit authority is not entitled to immunity if the employee acted negligently in operating the bus, so the trial court's decision denying the transit authority's motion for summary judgment is affirmed.

Negligence/Wrongful death/Dissent. Lombardo v. Best Western Hotels & Resorts | 2023-Ohio-2300 | 8th Appellate District | 07/06/2023 In plaintiffs-parents' negligence and wrongful death action against defendants-hotel owners, claiming that adult son died from using illicit drugs while he was a guest at hotel, trial court did not err in granting defendants' Civ.R. 12(B)(6) motion to dismiss, even though son's father and son's sobriety sponsor requested that hotel conduct "wellness checks" of son and hotel did not confirm that son was a guest, since defendants had no duty to plaintiffs or to son's sobriety sponsor to conduct wellness checks or to assist them by truthfully confirming that son was a guest, plaintiffs did not allege that anyone at hotel knew that son was in medical distress, and allegation that defendants may have been aware of, or were responsible for, the presence of illicit substances was merely speculative; there was a dissenting opinion in this case.

Negligence/Default judgment/Relief from judgment. Wottreng v. CBTM Elberon, L.L.C. | 2023-Ohio-2207 | 1st Appellate District | 06/29/2023 In plaintiff's negligence action against defendant-apartment owner for injuries sustained when apartment roof collapsed on him, resulting in a default judgment, trial court erred in granting defendant's motion for relief from judgment for lack of notice on reasoning that Civ.R. 60(B)(5) applied where defendant had notice of the suit but assumed that counsel had handled matter, and because defendant's actions fell within the category of excusable neglect, Civ.R. 60(B)(1), defendant's motion was subject to a one-year time period, which defendant did not meet, and relief from judgment under Civ.R. 60(B)(5) was not available when other provisions of Civ.R. 60(B) are applicable.

Slip and fall/Summary judgment/ Self-serving evidence. Kiser v. United Dairy Farmers | 2023-Ohio-2136 | 10th Appellate District | 06/27/2023 In plaintiff's negligence action against defendant-store for injuries sustained when she slipped and fell in a parking lot puddle caused by a beverage spilled minutes before her arrival, summary judgment in favor of defendant was error where plaintiff's self-serving testimonial evidence presented in her affidavit, including cashier's statement acknowledging the puddle, conformed to the requirements of Civ.R. 56(C) and should have been considered, and cashier's statement to plaintiff was an exception to hearsay pursuant to Evid.R. 801(D)(2).

Legal malpractice/Criminal case/ Exculpatory evidence. Guilford v. Zaner | 2023-Ohio-2098 | 3rd Appellate District | 06/26/2023 In plaintiff's legal malpractice action against defendant-attorney for advising plaintiff to accept plea agreement on criminal charges and for failing to obtain potentially exculpatory evidence, trial court erred in granting defendant's Civ.R. 12(C) motion for judgment on the pleadings where, regardless the duties Brady imposed upon the prosecutor regarding exculpatory evidence, defendant had the duty to be reasonably diligent in investigating facts and evidence in the case, and plaintiff claimed that defendant had breached that duty and alleged facts related to that purported breach.

Fraudulent transfer/Good faith. Estate of Cruz v. Peffley | 2023-Ohio-2081 | 2nd Appellate District | 06/23/2023 In action under the Uniform Fraudulent Transfer Act, R.C. 1336.04, by plaintiffs-investors, who had a net loss from investing in a Ponzi scheme, against defendants-investors who had a net gain, judgment in favor of non-testifying plaintiffs was error since those plaintiffs

did not establish that they invested in the scheme in good faith, and only innocent investors who reasonably believed that they were investing in a legitimate enterprise are entitled to claims for restitution.

Wrongful death/Prescription drug dispensing. Estate of Mehrer v. Walgreens Specialty Pharmacy | 2023-Ohio-2070 | 10th Appellate District | 06/22/2023 In decedent's estate's negligence and R.C. 2151.01 wrongful death action against pharmacy for dispensing, pursuant to two physicians' prescriptions, addictive drugs to control decedent's post-surgical pain, which estate asserted, supported by expert's affidavit, led to decedent's death, summary judgment in favor of pharmacy was error where estate argues that there is a reasonable dispute of fact whether the prescriptions were the cause of decedent's death, whether the drugs were necessary to manage decedent's pain, and whether the pharmacy showed lack of concern.

Defamation/Qualified privilege. Hartman v. Kerch | 2023-Ohio-1972 | 8th Appellate District | 06/15/2023 In defamation action filed after defendant stated in a letter to community president that plaintiffs "prey on older single women," trial court erred in granting summary judgment to defendant where the statement was one of fact, was defamatory per se, and was published; questions remain whether the statement was false or substantially true, whether plaintiffs suffered injury as a result of the statement's publication, whether the statement was protected by qualified privilege, and whether the defendant acted with the requisite degree of fault, so the case is remanded to the trial court for further proceedings.

Legal malpractice/Attorney-client relationship/Standing. Starner v. Onda | 2023-Ohio-1955 | 10th Appellate District | 06/13/2023 In legal malpractice action by plaintiff-owner of trucking companies against defendant-attorney, arising from defendant's representation of plaintiff in the problematic sale of businesses, alleging that defendant was responsible for the problems, summary judgment in favor of defendant on reasoning that the action was not timely filed was error since the question remains as to the date the attorney-client relationship terminated where there is evidence, such as billing records, that plaintiff's action in hiring a new attorney did not necessarily terminate the relationship with the defendant, and therefore plaintiff's claim may not be barred by the R.C. 2305.11(A) statute of limitations; as well, the trial court erred in granting summary judgment to defendant on reasoning that plaintiff lacked standing to pursue legal malpractice claims on behalf of the businesses since the businesses had their own standing.

Defamation/Per quod. Mitchell v. Fix | 2023-Ohio-1957 | 5th Appellate District | 06/13/2023 In township trustee candidate's defamation action, alleging that political party chairman made false statements about candidate's campaign, trial court did not err in granting chairman's Civ.R. 12(B)(6) motion to dismiss where chairman's statements required interpretation and consideration of extrinsic evidence and therefore candidate's claim was for defamation per quod, rather than defamation per se, and candidate failed to specifically allege special damages, as required by Civ.R. 9(G), to establish defamation per quod.

Legal malpractice/Damages. Paldino v. Johnson | 2023-Ohio-1947 | 11th Appellate District | 06/12/2023 In plaintiff's legal malpractice action against defendants-attorneys for failure to introduce evidence of plaintiff's mortgage on property in underlying action involving a parcel of real estate, resulting in underlying defendant receiving an excessive share of the actual equity in the property, trial court did not err in its calculation of damages in favor of plaintiff in the instant malpractice case where attorney fees were appropriately denied because plaintiff failed to present evidence to support award, and punitive damages were not awarded under R.C. 2315.21 because there was no evidence that defendants acted with malice or egregious fraud.

Wrongful death/Medical records/ Privilege/Waiver. Morawski v. Davis | 2023-Ohio-1898 | 8th Appellate District | 06/08/2023 In an action filed by administrator of estate of victim for wrongful death against driver, who intentionally drove his car into oncoming traffic in an attempt to commit suicide, resulting in a conviction for murder, and negligent entrustment against driver's parents, where administrator issued subpoenas for medical records from two of the driver's medical providers, trial court's order granting administrator's motion to compel discovery and motion to enforce the subpoenas is affirmed since driver did not include the disputed documents in the record, and the record contains no evidence that driver complied with his duty to provide the court with the information needed to challenge the order to compel discovery; also, administrator's argument that driver waived the physician-patient privilege under R.C. 2317.02(B) when he made his mental condition an issue in his criminal case is of no avail since waiver in one case is limited to that case.

Negligence/Immunity/Notice. Boucher v. Cleveland | 2023-Ohio-1818 | 8th Appellate District | 06/01/2023 In pedestrian's negligence action against city for injuries sustained when she stepped on damaged covering over utility-access port on sidewalk and fell through, trial court did not err in denying city's political subdivision immunity-based motion for summary judgment where, although city had immunity while engaging in a proprietary function, city also had actual notice of the hazard, an exception to immunity under R.C. 2744.02(B)(2), and the question remains as to whether city employee secured the reported hazard area before or after pedestrian's fall.

Emotional distress/Dog attack. Williams v. Toy | 2023-Ohio-1844 | 5th Appellate District | 06/01/2023 In plaintiff's negligent infliction of emotional distress action against defendants-dog owners after dog jumped defendants' fence and attacked plaintiff's dogs, summary judgment in favor of defendants was error since evidence showed that plaintiff was fearful for her own physical safety at the time of the attack, she was within the zone of danger because the same course of events that resulted in the death of one of her dogs simultaneously put her at risk of harm, and expert testimony was not required to show that plaintiff's distress was genuine.

Fraudulent transfer/Real property/ Consideration. Guernsey Cty. Community Dev. Corp. v. Speedy | 2023-Ohio-1796 | 5th Appellate District | 05/30/2023 In plaintiff-business' action alleging that defendants-former director and family transferred properties to family members in violation of the Uniform Fraudulent Transfer Act, summary judgment in favor of plaintiff is affirmed where plaintiff provided evidence that, inter alia, defendants' transfers of property were made to insiders as gifts without monetary consideration, transfers were made just before judgment was rendered in

Torts (Continued)

a federal case against defendant, and after one transfer, defendants continued to retain control of the property, R.C. 1336.04(B).

Negligence/Vehicle accident/ Apportionment. Rericha v. Ohio Dept. of Rehab. & Corr. | 2023-Ohio-2155 | Court of Claims | 05/26/2023 In plaintiffs' negligence and loss of consortium action seeking damages for injuries sustained in vehicle accident with employee of defendant-department of corrections and second accident with non-party, magistrate recommends judgment in favor of plaintiffs where collisions were close in time, expert testified that the degree to which plaintiff's injuries were caused by one collision versus the other could not be pinpointed and were not divisible from a medical standpoint, and the negligence of both drivers was a substantial factor in producing harm, so defendant did not show that harm was capable of apportionment, and defendant's liability was not cut off by the negligence of the driver causing the second collision.

Defamation/Implication. Carr v. Educational Theatre Assn. | 2023-Ohio-1681 | 1st Appellate District | 05/19/2023 In former employee's defamation per se claim against nonprofit education association for statements in email allegedly indicating that employee's attendance at a conference would endanger student safety, summary judgment in favor of association was not error where defamation by implication is not a subset of defamation per se, employee did not argue defamation per quod, through interpretation, innuendo, or consideration of extrinsic evidence, and under the innocent construction rule, the innocent meaning of an email must be adopted and the defamatory meaning rejected.

Traffic and OVI

OVI/Municipal ordinance. State v. Fox | 2023-Ohio-1912 | 2nd Appellate District | 06/09/2023 Bench conviction of municipal ordinance OVI was not supported by sufficient evidence where there was no evidence presented that defendant was arrested in the municipality since the trial court did not make any finding concerning defendant's location, the court's familiarity with the area in question or whether defendant was driving within the village.

Impaired driving/Suppression. State v. Hein | 2023-Ohio-1592 | 2nd Appellate District | 05/12/2023 In a prosecution for OVI, the trial court's grant of motion to suppress was error since the court made no factual findings that an appellate court could defer to the trial court and also erroneously hold city to a probable cause standard for the investigatory detention since the city was only required to show that the police had a reasonable, articulable suspicion of criminal activity in order to detain defendant and to administer a field sobriety test, an informant was very reliable since he was an officer and waved down the police immediately after observing defendant's erratic driving and signs indicating he was impaired, and the field test was administered in substantial compliance with NHTSA standards and indicated that defendant was intoxicated.

Workers' Compensation

Aggravation of condition/Conflicting testimony. Weston v. FCA US, L.L.C. | 2023-Ohio-1918 | 6th Appellate District | 06/09/2023 Judgment that employee is eligible to participate in the workers' compensation system for substantial aggravation of a pre-existing condition affecting her leg is affirmed after employee's original claim was allowed where employee's expert referenced objective clinical x-ray findings related to employee; while employer's expert reached a contrary conclusion, the jury, acting as the trier of fact, listened to the testimony of both sides and credited employee's expert and his opinion, the fact that the evidence or testimony is subject to different interpretations does not mean that the judgment is against the manifest weight of the evidence, and there is no evidence that the fact finder lost its way or created a manifest miscarriage of justice, despite conflicting testimony.

Death benefits/Family member. State ex rel. McDonald v. Indus. Comm. | 2023-Ohio-1620 | Supreme Court of Ohio | 05/17/2023 Granting, in part, deceased worker's fiancée's petition for a writ of mandamus to compel industrial commission to vacate its decision that fiancée was not eligible for death benefits because she was not deceased worker's surviving spouse is affirmed, directing commission to vacate its order and to determine whether fiancée established that she is a family member and, if so, the extent of her dependency, R.C. 4123.59(D) and 4123.95, since fiancée and decedent had two minor children together, they owned property with joint rights of survivorship, they were jointly responsible for mortgage payments, and they each held life insurance policies naming the other as sole beneficiary.