OHIO STATE BAR ASSOCIATION REPORT

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Ohio case law summaries from April 1, 2024 – July 31, 2024

The following are selected summaries of cases decided by Ohio courts between April. 1, 2024 – July 31, 2024. To view all of the decisions issued in this time period or to read the selected cases in their entirety, please visit ohiobar.org/greenbook where you can search by case name or view by date.

Administrative and Regulatory

Appeal/Standard of review. Omni Energy Group, L.L.C. v. Vendel | 2024-Ohio-2439 | 10th Appellate District | 06/25/2024 In energy group's administrative appeal of orders issued by chief of state division regarding permits for underground injection wells, trial court erred in affirming the orders by applying an incorrect R.C. 1509.37 standard of review for an appeal from an order of the oil and gas commission since, pursuant to R.C. 1503.03(D), an order by the chief is considered an adjudication order for the purposes of an R.C. Ch. 119, and the standard of review is whether an order is supported by reliable, probative, and substantial evidence and is in accordance with law.

License suspension/Due process. White v. State Med. Bd. of Ohio | 2024-Ohio-1553 | 10th Appellate District | 04/23/2024 In physician's appeal of suspension of medical license, citing misconduct with patient, trial court erred in reversing medical board's decision on reasoning that physician was denied due process where the board disciplined physician only for R.C. 4731.22 violations charged in the notice of intent, any other considerations were within the board's discretion and did not demonstrate a deficiency in the notice of opportunity for a hearing, and physician's due process rights were not violated because the board relied only on the portions of the exhibit that were read into record and not the entire exhibit that was not admitted into evidence.

Construction

Contract/Breach/Inspection. Kaplan v. Hammond | 2024-Ohio-2492 | 6th Appellate District | 06/28/2024 In plaintiff-property owner's breach of contract action against defendant-architect for water intrusion into residence, which resulted in damage to property, summary judgment in favor of defendant was error where defendant failed to provide corroborating emails regarding allegedly established inspection schedule in response to allegation that he failed to abide by the schedule, and the question remains as to who was at fault for failure of inspection to take place and whether defendant was permitted to exercise termination clause to excuse performance of inspection.

Payment/Promissory estoppel/Lien. Pitt v. Quanta Bldg. Group | 2024-Ohio-2297 | 9th Appellate District | 06/17/2024 In construction worker's promissory estoppel action against construction company for failure to pay for labor after labor supplier failed to pay under terms of contract, judgment in favor of construction worker is affirmed where construction company made a clear and unambiguous promise that worker would be paid, worker did not file a mechanic's lien based upon construction company's promise, and if worker had not relied on construction company's promise, he could have preserved his right to subsequently file a lien by filing a notice of furnishing pursuant to R.C. 1311.05(A).

Contract/Unjust enrichment/Damages. Williams v. Edgell | 2024-Ohio-2129 | 7th Appellate District | 06/03/2024 In plaintiffs-homeowners' breach of contract and unjust enrichment action against defendant-contractor seeking damages for defects in construction of barn, trial court erred in entering judgment in favor of plaintiffs on both claims where damages existed under the breach of contract claim, but the parties had an express oral contract as to terms to which they agreed to be bound, and there was no unjust enrichment from conduct separate from defendant's breach of contract.

Contract/Breach/Payments. Crockett Homes, Inc. v. Tracy | 2024-Ohio-1464 | 7th Appellate District | 04/17/2024 In action by construction company for breach of contract and related claims, asserting that homeowners did not make "draw" payments when company had made certain progress under the parties' contract, leading to company's refusal to continue working until payments were made and homeowners' decision to change locks on the house, trial court erred in granting summary judgment to company where there is a genuine issue of fact whether company was entitled to payment for the draw and consequently if its declaration that it was ceasing contract work until it was paid was justified; as well, the parties' conduct toward the end of their working relationship shows a genuine issue of fact as to which party breached the contract and what conduct or collective conduct rose to the level of a material breach, and it is possible that both parties were in breach.

Contract/Breach/Arbitration. Cuyahoga Supply & Tool, Inc. v. BECDIR Constr. Co. | 2024-Ohio-1375 | 8th Appellate District | 04/11/2024 In supplier's action on a mechanics lien against construction company for failure to pay for supplies and materials, trial court erred in denying company's motion to compel arbitration and to stay proceedings where company's purchase order contained an arbitration provision and did not need to be signed to be enforceable, and supplier took no action to show that it disagreed with the arbitration clause and instead performed its part of the contract by supplying materials ordered in the purchase order.

Contracts

Arbitration/Waiver/Fraud. Cleveland v. Power Home Solar, L.L.C. | 2024-Ohio-2144 | 5th Appellate District | 06/04/2024 In plaintiffs-homeowners' action against defendant-business owner and related defendants, alleging, inter alia, fraud for misrepresentations regarding purchase of solar panels, trial court's denial of defendant's motion to compel arbitration is affirmed since defendant waived the right to arbitrate by extensively participating in the litigation before filing the motion, and the arbitration agreement was found

Contracts (Continued)

to be procedurally and substantively unconscionable where the 40-page long contract with sub-agreements was presented in electronic format only and in a rapid fashion, without providing plaintiffs an opportunity to review it in a reasonable manner.

Oral/Breach/Statute of frauds/ Dismissal. Templeton v. Winner Ents., Ltd. | 2024-Ohio-2745 | 7th Appellate District | 05/28/2024 In plaintiffs-restaurant purchasers' action against defendant-seller alleging breach of their oral agreement to purchase the restaurant and a number of related tort claims, trial court erred in granting defendant's Civ.R. 12(B)(6) motion to dismiss on reasoning that the statute of frauds applied since plaintiffs' claims asserting defendant's fraudulent actions and claims for unjust enrichment were not barred by the statute of frauds because plaintiffs were not seeking specific performance, the parties' conduct was consistent with the terms of the unsigned agreement, and the complaint was quite detailed, satisfying Civ.R. 8(A) pleading requirements.

Breach/Defective products/Continued use/Damages. FabMetals, Inc. v. Stratacache, Inc. | 2024-Ohio-2006 | 2nd Appellate District | 05/24/2024 In plaintiff-metal fabricator's action against defendant-signage company for failure to pay for orders of products/ parts related to menu boards where defendant counterclaimed for defective parts, trial court erred in awarding all the damages sought by defendant since defendant had replaced only a portion of defective parts, while others were still in use, defendant continued to receive value from the defective parts, and the questions remain as to extent of damages incurred for defective parts already replaced and of damages that will actually be incurred for defective parts that will later be replaced.

Breach/Third-party complaint/ Pleading. Regeneration Schools of Ohio v. Mangen1, L.L.C. | 2024-Ohio-1899 | 2nd Appellate District | 05/17/2024 In plaintiff-school's breach of contract action against defendant-financial services provider, alleging invoicing practices and amounts inconsistent with the parties' agreement and with defendant's fiduciary obligations, trial court erred in striking defendant's amended third-party complaint against plaintiff's management company, alleging tortious interference with contract, since defendant had no obligation to obtain plaintiff's consent or leave of court to amend its third-party complaint during the applicable period under Civ.R. 15(A), and error in striking complaint was not harmless because defendant was not afforded the required time to respond to the plaintiff's motion to dismiss its original third-party complaint, Civ.R. 12(B)(6).

Breach/Work performed/Notice period. Queen City Cleaning, L.L.C. v. I74 Wired, L.L.C. | 2024-Ohio-1761 | 1st Appellate District | 05/08/2024 In plaintiff-cleaning company's breach of contract and related claims action against defendant-office building owner after defendant terminated plaintiff's services and refused to make payments under the parties' contract, the trial court erred in granting summary judgment to defendant regarding plaintiff's claim for payment for work already performed and for the 30-day notice of termination period provided for in the parties' contract.

Breach/Damages calculation. GROB Sys., Inc. v. McDermott | 2024-Ohio-1734 | 3rd Appellate District | 05/06/2024 In plaintiff-engineering company's breach of contract action against defendant-apprentice for resigning from employment prior to completion of apprenticeship, trial court did not err in calculating damages by prorating the costs expended on defendant where the parties' agreement did not provide for liquidated damages and the amount plaintiff sought for breach was not reflective of damages actually incurred because defendant had nearly fulfilled the terms of the contract, and the method of calculating damages was not unreasonable.

Breach/Political subdivision/ Prejudgment interest. Vandercar, L.L.C. v. Port of Greater Cincinnati Dev. Auth. | 2024-Ohio-1501 | Supreme Court of Ohio | 04/23/2024 In breach of contract action against defendant, a port created under R.C. 4582.22(A), arising from plaintiff's purchase of a hotel and then assignment of its interest to defendant, where plaintiff alleged that defendant failed to pay redevelopment fee, resulting in a summary judgment for plaintiff, trial and appellate court's denial of plaintiff's claim for prejudgment interest is reversed on reasoning that under R.C. 1343.03(A) and 4582.22(A), a port may be held liable for prejudgment interest when a judgment is entered against it for payment of money due under a contract since R.C. 1343.03(D) does not provide any exception to the application of R.C. 1343.03(A), Gibson; as well, the Beifuss rule, limited to cases involving interest on back-pay awards against boards of education, does not apply to a port, even though both are political subdivisions with the capability to sue and to be sued.

Corporate and Business

Partnership/Percentage ownership. Gilcrest v. P. Gilcrest, L.L.C. | 2024-Ohio-2622 | 5th Appellate District | 07/10/2024 In plaintiff's action against defendant-partnership seeking a declaration concerning ownership percentage in partnership, summary judgment in favor of defendant is affirmed where defendant provided evidence of calculation errors which overstated plaintiff's ownership interest, and plaintiff did not question defendant's calculations nor provide her own calculations to refute the claim; trial court did not sua sponte grant summary judgment in favor of a non-moving party.

Derivative action/Standing/Amended complaint. Osborne v. J.T.O., Inc. | 2024-Ohio-2070 | 8th Appellate District | 05/30/2024 In plaintiffs-shareholders' breach of fiduciary duty action against defendants-corporate entities, summary judgment in favor of defendants on reasoning that plaintiffs lacked standing was error since plaintiffs had standing to bring the derivative claims on behalf of subsidiaries of parent companies in which they had interest, and the fact that the parent company was a limited partnership did not negate plaintiffs' standing, Civ.R. 23.1; as well, plaintiffs' motion for leave to amend the complaint was timely and made in good faith and should have been granted.

Dissolution/Agreement/Motion to strike. Dervin v. Christopher Cox Ins. & Invests., Inc. | 2024-Ohio-1304 | 5th Appellate District | 04/04/2024 In plaintiff's action seeking dissolution of business owned with defendant, resulting in a settlement agreement between the two parties, trial court erred in granting plaintiff's motion to strike a motion to enforce the settlement agreement filed by appellants-attorney and accountants involved in the dissolution process where the court provided no legal analysis or reasoning for granting plaintiff's motion to strike, and there was

no discussion as to whether appellants were third-party beneficiaries of the settlement agreement or whether appellants' res judicata argument was considered.

Criminal

Sex offenses/Minor/Witnesses/SANE/Social worker/Lay witness. State v. Bright | 2024-Ohio-2803 | 8th Appellate District | 07/25/2024 In convictions of, inter alia, rape of a child under ten years-old, the SANE nurse's and social worker's testimonies were permissible lay witness testimony because the state laid a foundation demonstrating that the SANE nurse and social worker had sufficient experience and training, and that each of their testimonies was based on personal knowledge and experience and, since the testimony was properly admitted, Crim.R. 16(K) was not violated, Belle; also discussed, expert DNA testimony, minor witness competency and ineffective assistance.

Appellate review/Limited remand/App.R. 12(A)(1)(a), (c). State v. Jones | 2024-Ohio-2719 | Supreme Court of Ohio | 07/25/2024 In an appeal of a conviction for drug offenses in which the court of appeals found the trial defense counsel provided ineffective assistance because there was a reasonable basis to challenge the consent to search the defendant's residence as coerced and involuntary and to challenge the officers' protective sweep of the house as unconstitutional, the Ohio Supreme Court holds that the court of appeals failed to comply with App.R. 12(A)(1)(a) by ordering a limited remand to allow the defendant to file a new motion to suppress since the court of appeals was required to affirm, modify or reverse the trial court's judgment of conviction that the defendant appealed from, App.R. 12(A)(1)(a), nor did the court of appeals decide each assignment of error that was raised, App.R. 12(A)(1)(c); case is remanded for the court of appeals to comply with App.R. 12 by entering a judgment that affirms, modifies or reverses the trial court's judgment of conviction and that decides all of the assignments of error that are not made moot by its ruling on another assignment of error.

Sentencing/Consecutive sentences/Allied offenses. State v. Gill | 2024-Ohio-2792 | 1st Appellate District | 07/24/2024 Convictions by plea of no contest to, inter alia, drug and weapons offenses are affirmed, however, the trial court erred in imposing consecutive sentences without making the required R.C. 2929.14(C) findings, and the trial court erred in failing to merge convictions for trafficking in various drugs and possession of those drugs offenses as allied offenses of similar import, as well as aggravated trafficking in drugs and aggravated possession of drugs, R.C. 2941.25; also discussed, denial of motions for continuance and to bifurcate, providing the Reagan Tokes notifications at the plea phase of a joint plea and sentencing hearing, failure to merge firearm specifications and major drug offender specifications.

Evidence/Best evidence rule/Expert testimony. State v. Hashim | 2024-Ohio-2753 | 6th Appellate District | 07/19/2024 In a conviction of murder, two counts of attempted murder and two counts of felonious assault, admission of the state's expert's testimony and report of ballistics matching of the weapon used to shoot the victims that was found in the defendant's residence did not violate the best evidence rule, Evid.R. 1002, where the defendant's claim that photographs of the weapons the expert referenced that were used in the shootings should have been admitted as the best evidence is without merit because the expert testimony and report were not offered to prove the content of the photographs since the expert's testimony was based on her personal observations and analysis of the projectile and cartridge casings that matched each weapon used in each offense.

Sentencing/Costs of confinement. State v. Brazzel | 2024-Ohio-2752 | 6th Appellate District | 07/19/2024 In convictions in two cases by guilty pleas to attempted burglary in one case and possession of drugs in the other case, with the trial court sentencing the defendant to a three-year term of community control in both cases, and the defendant's subsequent violation of community control by, inter alia, a conviction in another case, the trial court erred by imposing discretionary costs of confinement, R.C. 2929.18(A)(5)(ii), in the judgment entry without first imposing the costs at the sentencing hearing.

Bond/Forfeiture. State v. Thompson | 2024-Ohio-2715 | 8th Appellate District | 07/18/2024 Trial court's imposition of bond forfeiture against surety was error since the defendant was incarcerated in another county, and the surety provided the trial court with notice of the defendant's incarceration prior to the show cause hearing date.

Sentencing/Consecutive firearm specifications/Separate acts. State v. Fitzgerald | 2024-Ohio-2710 | 8th Appellate District | 07/18/2024 In an appeal by the state in a conviction of the defendant by plea to two counts of felonious assault and drug trafficking of fentanyl, the trial court erred in imposing a one-year firearm specification but ordering it to be served concurrently to two other firearm specifications and other prison sentences since when officers executed the search warrant the day after the felonious assault, they located evidence of drug trafficking and the defendant was charged for that, but since there was no showing that the drug trafficking conduct had any relation to the shooting that had occurred the prior day, the offenses were separate acts or transactions, and the firearm specifications were required to be run consecutively.

Appeal/Remand/Defendant's presence/En banc review/Crim.R. 26(A)(2). State v. Maldonado | 2024-Ohio-2652 | Supreme Court of Ohio | 07/16/2024 In an appeal of the court of appeals' holding in an en banc proceeding that on remand to the trial court from a direct appeal of a conviction for the sole purpose to vacate or to delete a portion of any criminal sanction, a defendant's presence at the trial court is not required, Crim.R. 43(A), and because no sentence was imposed de novo on remand, the appellant is not entitled to another days-of-confinement calculation since sole issue on remand was to delete a concurrent term and a reporting requirement; however, the court of appeals did err by holding an en banc review since App.R. 26(A)(2) requires a panel decision precede an en banc review, but since appellant cannot demonstrate prejudice, judgment is affirmed; dissenting opinion filed.

Discovery/In-camera review/Brady. State v. Kriwinsky | 2024-Ohio-2690 | 8th Appellate District | 07/15/2024 In a conviction of the defendant-pediatrician for rape, sexual assault and two counts of gross sexual imposition of a 15 year-old male during a medical appointment, the trial court did not err by ordering the full file system extraction of the alleged victim's cellular device, with the state preserving the imaging from the

phone and providing the defendant with the limited data stated in the journal entry and agreed upon by both the alleged victim's and the defendant's trial counsels; also, "[t]he disclosure of any portion of the records to the prosecutor does not make the records subject to discovery, unless the material is such that due process requires that the prosecutor provide it to the defendant pursuant to the Brady Rule," R.C. 2930.071(A)(4).

Unlawful interest in a public contract/ Theft in office. State v. Stinebaugh | 2024-Ohio-2677 | 3rd Appellate District | 07/15/2024 In the defendant's appeal of convictions in two of five charged offenses, the court of appeals reverses the conviction of having an unlawful interest in a public contract because the state charged the defendant under R.C. 2921.42(A)(1), but failed to prove he had a definite and direct interest in that contract, and the court of appeals also reverses the conviction for theft in office because the state failed to prove that the challenged expenditure lacked authorized consent; the court of appeals affirms the three convictions for conflicts of interest, R.C. 103.02(D); also discussed, the defense counsel did not provide ineffective assistance; dissenting opinion in part.

Plea/Post-sentencing withdrawal/ Lack of hearing. State v. Evans | 2024-Ohio-2679 | 3rd Appellate District | 07/15/2024 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a), the trial court erred by summarily granting the defendant's post-sentencing Crim.R. 32.1 motion to withdraw his guilty plea since the state was given no opportunity to respond to the motion and because no hearing was held on the motion.

Sealing/Hearing/Explanation for finding. State v. Hufford | 2024-Ohio-2667 | 12th Appellate District | 07/15/2024 Denial of application to seal record of a 2007 conviction of fifth degree felony importuning, R.C. 2907.07(D)(2), was error since the court of appeals found the record devoid of any evidence to indicate the hearing on the applicant's motion ever occurred, the trial court's decision denying the motion fails to provide any explanation for its finding that the application was "appropriate," but that the applicant was statutorily ineligible to have his record sealed, and R.C. 2953.32(D) mandates that at the hearing on the motion, the trial court must make several factual and legal determinations that was not done.

Sentencing/Community control violation. State v. Schrack | 2024-Ohio-2654 | 5th Appellate District | 07/12/2024 Following a conviction of illegal use of SNAP benefits, R.C. 2913.46(B), and two counts of telecommunications fraud, R.C. 2913.05(A), all third-degree felonies, the trial court erred by failing to advise the appellant at the sentencing hearing of the possible consequences for violations of her community control where in a subsequent prosecution, the appellant pled guilty to second-degree burglary and also she pled guilty in a separate hearing to violation of community control in the prior case with the trial court imposing a six-month sentence and, although the trial court discussed the ramifications of violating conditions of community control at her change of plea hearing and in the judgment entry, it failed to do so at the sentencing hearing, and the court of appeals remands the issue of sentencing pursuant to R.C. 2929.15(B) for the violation of community control conditions in the prior action; also discussed, prosecutorial misconduct.

Speedy trial/Limitations. State v. Jama | 2024-Ohio-2657 | 6th Appellate District | 07/12/2024 In a prosecution for, inter alia, aggravated trafficking and aggravated possession of drugs, the trial court erred in granting the defendant's motion to dismiss on speedy trial grounds since the defendant failed to respond to the state's reciprocal demand for discovery nor inform the state that he had no discovery to provide for 237 days, tolling the time period in which he was to be brought to trial under R.C. 2941.401 and R.C. 2945.72(D) by failing to respond within 30 days after the state's request was filed, Palmer.

Sentencing/Community control expiration. State v. Davila | 2024-Ohio-2672 | 11th Appellate District | 07/12/2024 In a conviction by plea to attempted improperly handling firearms in a motor vehicle, a misdemeanor of the first degree, R.C. 2923.16(D) and (I), and imposition of community control, the trial court erred by ordering the defendant to serve 180 days in a county jail because the trial court lacked authority to sentence the defendant for a probation violation since his term of community control had expired, Rue, where the state acknowledges "that the trial court did not initiate formal court proceedings, nor schedule the violation court proceedings, until Appellant's apprehension after the expiration of his community control sanctions," and the issuance of a probation warrant did not extend the period of community control sanctions, Washington.

Sentencing/Community control/Tolling. State v. Washington | 2024-Ohio-2670 | 11th Appellate District | 07/12/2024 In a conviction by plea to aggravated trafficking in drugs and trafficking in cocaine, and imposition of community control, the defendant subsequently admitted to violation of probation, the trial court sentencing him to 180 days in jail and ordering his community control be terminated was error since the trial court's mere issuance of a warrant did not automatically toll the expiration of the community control sanction, and the trial court's failure to act means that the defendant's community control sanction was not tolled for absconding or being confined for any other offense while under a community control sanction, and the community control term has now expired.

Prosecutorial misconduct/Closing argument/Impeachment. State v. Ransom | 2024-Ohio-2634 | 8th Appellate District | 07/11/2024 In a conviction of, inter alia, murder, the state did not commit prosecutorial misconduct based on the prosecutor's comments in closing argument that the defense counsel's introduction of a video of a weapon was meant to mislead the jury about who committed the murder by impeaching a witness with a two-second video of an unidentified person, who was not the defendant, holding a gun in the witness' car, since the exhibit was merely used to impeach the witness' testimony that she had not previously seen a firearm in her vehicle prior to the shooting and, beyond an unsupported inference, no additional testimony or evidence was introduced to suggest the video was taken in the days leading up to the shooting or that the unidentified male in the video was connected to the shooting.

Plea/Validity/Post-release control. State v. Bradford | 2024-Ohio-2669 | 4th Appellate District | 07/10/2024 In a conviction by plea to non-support of dependents, theft of a motor vehicle and burglary, the trial court erred in accepting a guilty plea to burglary since the plea was not validly made as to the burglary charge because the trial

court failed to advise the defendant during the Crim.R. 11 plea hearing that post-release control would be mandatory upon her release from prison on the burglary charge, but instead, she was told it was optional, and the state concedes error on the burglary conviction; cause is remanded on the burglary offense.

Sentencing/Post-release control/ Consecutive sentences. State v. Gross | 2024-Ohio-2598 | 12th Appellate District | 07/08/2024 In a conviction by plea to 16 counts related to the manufacture, possession and trafficking of anabolic steroids and one count of possession of cocaine, the trial court imposed the incorrect post-release control sanction since the defendant pled to 16 felonies of the third-degree and one felony of the fifth-degree, and none of these were offenses of violence or sex, and thus the trial court could only impose a post-release term of up to two years, and the trial court also erred in imposing consecutive sentences by failing to satisfy any options for the mandatory, third finding of R.C. 2929.14(C)(4)(a)-(c), nor did the trial court speak to whether the circumstances of the defendant's crimes were "so great or unusual" that consecutive sentences should be imposed; remanded for re-sentencing.

Weapons offense/Search/Traffic stop. State v. Hobbs | 2024-Ohio-2601 | 11th Appellate District | 07/08/2024 In a bench conviction of having weapons while under disability, failure to disclose personal information and falsification, the state's dismissal of a traffic red light violation prior to the trial was not a dismissal on the merits, and the defendant's conviction of the weapons offense was not against the weight of the evidence since, even if the defendant may not have owned either the vehicle or the firearm, that fact is irrelevant since, at the time of the stop, the firearm was under his dominion and control in light of the officers' testimony that the defendant's wallet was found in a satchel with the firearm on the back floorboard of the vehicle, Yelling.

Expert witness/Timely disclosed following continuance. State v. Pajestka | 2024-Ohio-2593 | 9th Appellate District | 07/08/2024 In convictions of OVI, R.C. 4511.19(A)(1)(a) and (A)(1)(d) and R.C. 4511.21(C), the trial court erred by excluding the defendant's expert and prohibiting his expert from testifying at a trial that had been continued following the court's exclusion of the expert, and the ruling prejudiced the defendant's substantial rights since once the trial court continued the trial, the defendant timely disclosed his expert and produced his expert report and, thus at that time, there was no prejudice to the state, Bellamy, with the court of appeals noting the trial court is not precluded on remand from addressing the state's other objections to the admissibility of the defendant's expert testimony, Crim.R. 16.

Sentencing/Merger/Allied offenses. State v. Cass | 2024-Ohio-2614 | 3rd Appellate District | 07/08/2024 In a conviction of, inter alia, three counts of tampering with evidence, R.C. 2921.12(A)(1), the defendant failed to establish a merger of offenses for sentencing that was warranted since the evidence at trial supported the finding that the defendant's conduct resulted in three offenses of the same or similar kind committed separately, and thus he could be convicted of all three tampering-with-evidence offenses; as well, the trial court did not err by not merging the convictions for identity fraud and theft since the defendant held himself out to be the victim by using her account information to access her account without her consent, completing the identity fraud, R.C. 2913.49(B)(1), and the theft offense was completed after the identity fraud had already been completed.

Sentencing/Consecutive sentences/ Findings. State v. Miller | 2024-Ohio-2578 | 8th Appellate District | 07/03/2024 In a conviction for gross sexual imposition and two counts of child endangering in the defendant's abuse of two of his daughters, with the child endangering counts merged as allied offenses that was reversed on appeal and remanded for re-sentencing, the trial court erred in imposing the same consecutive prison sentences totaling eight years on re-sentencing without holding a de novo re-sentencing hearing on the child endangering counts since the trial court's incorporation of its prior consecutive sentencing findings on remand is incompatible with a de novo re-sentencing hearing that occurs after consecutive sentences have been vacated; case is remanded for the limited purpose of complying with the statutory language of R.C. 2929.14(C)(4).

Sentencing/Improper factors. State v. Yeban | 2024-Ohio-2545 | 1st Appellate District | 07/03/2024 In a conviction of operating a motor vehicle with a breath-alcohol concentration of over 0.17 percent, R.C. 4511.19(A)(1)(h), the trial court erred by sentencing the defendant based on its improper considerations outside the statutory factors for misdemeanor sentencing since it sentenced the defendant to 180 days in jail by impermissibly weighing the defendant's perceived lying about not being the driver and his claim of being a sovereign citizen, rather than basing the sentence on a consideration of R.C. 2929.22(C) criteria, Brooks; remanded for re-sentencing.

Sentencing/Sentence not authorized/ Resentencing. State v. Castro | 2024-Ohio-2453 | 8th Appellate District | 06/27/2024 In appeal by state of sentence imposed in two cases, court of appeals vacates the sentence and remands for resentencing in a conviction by plea to identity fraud in one case and to failure to comply, attempted having weapons while under disability, attempted receiving stolen property, and obstructing official business in another case, trial court erred by ordering defendant's firearm specification sentence to run concurrently to other sentences from the same indictment, and since the sentence is contrary to law and void because the trial court imposed a sentence that was not authorized by law, the sentence is a nullity and the parties are in the same position as if there had been no judgment; remanded for resentencing.

Plea/Pre-sentence withdrawal. State v. Strmac | 2024-Ohio-2405 | 11th Appellate District | 06/24/2024 In a conviction by plea to felonious assault, the trial court erred in denying the defendant's pre-sentence motion to withdraw plea where the state concedes error, admitting that it provided the defendant with new discovery on the day she entered a guilty plea and that the unknown additional discovery was significant enough that it would have necessitated a continuance of the trial, and also, the defendant had a warrant for her arrest at the time of her plea and the trial court did not recall the capias until after the defendant pled guilty, and the court of appeals concluded the record does not reveal that the trial court gave full and fair consideration to the plea withdrawal request, Peterseim and Griffin.

Criminal (Continued)

Sentencing/No-contact order. State v. Black | 2024-Ohio-2365 | 8th Appellate District | 06/20/2024 In a conviction by plea to strangulation and attempted domestic violence, the state concedes the trial court erred by imposing a no-contact order and a prison term for the same felony offense since a no-contact order is a community control sanction, and prison terms and community control sanctions are alternative sanctions for felony offenses, Anderson.

Sentencing/Allied offenses. State v. Belton | 2024-Ohio-2357 | 8th Appellate District | 06/20/2024 In a conviction of drug trafficking and drug possession, the trial court committed plain error in failing to merge the defendant's convictions for drug possession and trafficking of the same drug as allied offenses of similar import, R.C. 2941.25, since "[b]y its nature, a drug-trafficking offense under R.C. 2925.03(A)(2), which requires that the offender knowingly '[p]repare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance,' necessarily includes some degree of possession,' " Martin; dissenting opinion on the trial court's denial of motion to suppress on the basis that the defendant should not have been subject to an investigatory stop.

Double jeopardy/Mistrial/Judicial misconduct. State v. Smith | 2024-Ohio-2358 | 8th Appellate District | 06/20/2024 In a prosecution against six defendants for, inter alia, aggravated murder, in which three co-defendants pled guilty and agreed to truthfully testify, in their consolidated appeal of the trial court's decision denying their motion to dismiss on double jeopardy grounds, arising out of the trial court's bailiff's ex parte asking the prosecutor whether the state was planning to call any witnesses to establish independent proof of a conspiracy prior to the testimony of three co-defendants who pled guilty, the trial court did not err in denying the motion to dismiss since there was no prosecutorial misconduct because the state properly reported the communications to the defense, with the trial court declaring a mistrial, and the co-defendants have not demonstrated that the judicial misconduct was intended to elicit them to seek a mistrial.

Sentencing/Reagan Tokes/Judicial release. State v. Johnston | 2024-Ohio-2337 | 10th Appellate District | 06/18/2024 In an appeal by the state of the trial court's judgment imposing a definite sentence of four years' incarceration for second-degree felony burglary, judgment is reversed and cause is remanded for a new sentencing hearing and sentence that complies with the Ohio Supreme Court's opinion in Hacker upholding the Reagan Tokes Law since the grant of judicial release to the defendant while a sentencing appeal is pending does not moot the appeal, R.C. 2929.20(K) and Pitts, but since the state concedes that, absent a violation, the defendant should remain on judicial release, the cause is remanded for the limited purpose of allowing the trial court to hold a sentencing hearing to impose an indeterminate sentence compliant with the Reagan Tokes Law.

Sentencing/Consecutive sentences/ Required findings. State v. Ventura | 2024-Ohio-2311 | 1st Appellate District | 06/18/2024 In a conviction by plea of guilty to rape of two children who were under five years-old, R.C. 2907.02, the state concedes that the trial court failed to make the required findings pursuant to R.C. 2929.14(C)(4) concerning the necessity to protect the public and that consecutive sentences were not disproportionate to the seriousness of the defendant's conduct and to the danger he posed to the public, Bonnell; remanded for re-sentencing.

Theft/Consent/Sufficiency and weight. State v. Henderson | 2024-Ohio-2312 | 1st Appellate District | 06/18/2024 In a bench conviction of theft, R.C. 2913.02(A)(1), the state presented insufficient evidence that the defendant obtained control over jewelry without the owner's consent since, when the sales transaction was submitted to the credit card issuer, the defendant received notification on his phone that the transaction was completed and the owner voluntarily allowed the defendant to leave the store with the jewelry after an investigating officer instructed the defendant to leave with the jewelry and return to pay for the jewelry if he discovered that the credit card transaction had not gone through, and the store owner agreed, took the defendant's contact information and allowed him to leave with the jewelry, and thus the defendant had the store owner's consent to obtain control over the jewelry when he first exerted control over it.

Post-conviction relief/Findings of fact and conclusions of law. State v. Reese | 2024-Ohio-2331 | 7th Appellate District | 06/17/2024 Following a conviction of aggravated murder and aggravated robbery, the trial court erred by dismissing a petition for post-conviction relief without making findings of fact and conclusions of law since the petition was neither a successive petition nor was it untimely, and the trial court was required to make findings of fact and conclusions of law pursuant to R.C. 2953.21; remanded for further proceedings.

Search/Geofence warrant/Good faith. State v. Shields | 2024-Ohio-2317 | 5th Appellate District | 06/17/2024 In a conviction by plea of no contest to three counts of aggravated robbery arising out of a series of robberies, the trial court did not err by denying a motion to suppress evidence obtained through a "geofence warrant" that a police detective requested to have Google provide of cellphones located in the area of three of the robberies that led to identifying the defendant as in the area of those robberies since the good faith exception was applicable because, as a result of information obtained by the officer, he had determined a specific suspect, present at specific places and at specific times, providing a nexus between the crimes and the subject of the search.

Murder/Complicity/Cellphone analysis. State v. Wilson | 2024-Ohio-2257 | 8th Appellate District | 06/13/2024 In bench convictions of, inter alia, three counts of murder, R.C. 2903.02(A) and (B), in two homicides, the trial court erred in part in conviction of one count of murder where, although evidence supported the defendant's complicity in one of the two murders based on cellphone and video analysis, the cellphone analysis of the defendant's phone and the phone of the other person who had been convicted of the first and second murders showed that the two phones pinged off different cell phone towers, with no evidence that the defendant's phone was in the area at the time that the victim was murdered and no other evidence placed the defendant at the scene of the murder of the second victim.

Sentencing/Restitution/Marsy's Law. State v. Scott | 2024-Ohio-2274 | 10th Appellate District | 06/13/2024 Following a conviction by plea to a series of home invasions in 2021 when the defendant was homeless, without adequate food, unemployed and struggling with alcohol dependency and imposition of an indefinite prison term of 10 to 12 years, the trial court erred by deferring payment of a restitution award until the defendant's release from prison, on account of the defendant's present indigency and impending imprisonment violated the victim's right to "full and timely restitution" under Ohio Const., Art. I, Sec. 10a(A)(7) where the parties had agreed to restitution in the amount of $250, the trial court's deferment of any payment of restitution while the defendant is incarcerated infringed on the victim's right to "full and timely restitution" under the constitutional provision.

Complicity/Sufficiency of evidence. State v. Washington | 2024-Ohio-2277 | 5th Appellate District | 06/12/2024 Conviction of, inter alia, complicity to felonious assault, R.C. 2925.03 and 2923.03, was not supported by sufficient evidence since "[m]ere presence of an accused when and where a crime is committed is not sufficient to establish aiding and abetting, even if the accused knows a crime is being committed or acquiesces in the criminal conduct of others," Cook.

Evidence/Other acts/Evid.R. 404(B)/ Harmless error. State v. Bradford | 2024-Ohio-2233 | 1st Appellate District | 06/12/2024 In a conviction of violating a protection order, R.C. 2919.27(A)(1), the trial court's admission of evidence of the underlying offense that resulted in the issuance of the protection order was error since the validity of the protection order was not a material issue in the case because the trial court's conclusion that the testimony was not Evid.R. 404(B) other acts evidence and was admissible to provide "context" to the jury about the issuance of the protection order was error since "context" is not a permissible purpose under Evid.R. 404(B) and, moreover, the defendant stipulated to the validity and service of the protection order; however, error was harmless because no reasonable possibility existed that the admission of the evidence contributed to the conviction in light of the other evidence presented at trial establishing the defendant's guilt.

Search/Investigative subpoena/Motion to suppress. State v. Diaw | 2024-Ohio-2237 | 10th Appellate District | 06/11/2024 In a prosecution for, inter alia, aggravated robbery, R.C. 2911.01, the trial court's grant of a motion to suppress investigative subpoenas pursuant to R.C. 2934.23 was error since the trial court's finding that the absence of sworn testimony involving the contents of the investigative subpoena required suppression of evidence under R.C. 2935.23 was incorrect because, although the subpoenas do not reflect the mandatory appearance requirement provided in R.C. 2935.23, the exclusionary rule did not apply since the statute reveals no express mandate to impose the exclusionary rule for a violation of the statute, Fielding, and the defendant had no reasonable expectation of privacy over the information obtained through the challenged investigative subpoenas; also discussed, third party doctrine and Carpenter opinion.

Mistrial/Double jeopardy/Unintentional miscommunication. State v. Khalif | 2024-Ohio-2239 | 10th Appellate District | 06/11/2024 In a conviction of discharge of a firearm on or near prohibited premises, the defendant's claim the trial court violated double jeopardy when it sua sponte declared a mistrial is without merit since the trial court determined there had been a miscommunication about the state's theory of the case which resulted in the defendant not having adequate notice of the state's main theory of the case, and it was not a specific discovery violation under Crim.R. 16, but an issue of fundamental fairness; although the defendant did not raise the issue of the inadequacy of the verdict form at trial, the verdict form failed to comply with R.C. 2945.75(A), and the conviction could only be for the least degree of the offense, Pelfrey and McDonald; also discussed, self-defense instruction, stand your ground law not retroactive and ineffective assistance.

Evidence/Hearsay. State v. Parker | 2024-Ohio-2212 | 11th Appellate District | 06/10/2024 In a conviction of, inter alia, murder, R.C. 2903.02(A), the defendant's argument that the trial court erred by permitting the state to play a 9-1-1 call containing statements of a non-testifying witness is without merit since the defendant does not point out any specific instances of hearsay in the 9-1-1 call, and she only states that "the call contained statements by people which implicated [Appellant] in some form of wrongdoing," but the state already had presented unrefuted evidence that the police had found and seized the victim's vehicle, and that a person other than the defendant had moved the vehicle to where they found it, and "[t]o offer the neighbor's statement for its truth would have disproven the State's theory of the case and risked creating a hopeless inconsistency in the testimony it had elicited from its witnesses."

Weapons disability/Relief from disability/Federal law. State v. Heffley | 2024-Ohio-2218 | 3rd Appellate District | 06/10/2024 Following a conviction of domestic violence and the trial court's subsequent denial of an "Application for Relief from Weapons Disability pursuant to R.C. 2923.14" after the defendant served the term of incarceration and was successfully released from post-release control, the trial court erred as a matter of law in finding the defendant ineligible to have his firearm rights restored under R.C. 2923.14 because of 18 U.S.C. 922(g)(1) since 18 U.S.C. 921(a)(33)(B)(ii) empowers a state to remove a federal firearms disability when, under the state's law, the person has had those rights restored; remanded for a determination based on the record whether to grant or deny the defendant's motion for relief from disability.

Evidence/Confrontation Clause. State v. Wallace | 2024-Ohio-2201 | 6th Appellate District | 06/07/2024 In a conviction of domestic violence, the defendant's Sixth Amendment Confrontation Clause rights were violated by an investigating officer's testimony of the victim's statements made to him since the defendant's girlfriend's statements were testimonial because there was no ongoing emergency when she made the statements to the officers since the defendant was outside the residence with an officer when she made her statements, she did not testify at trial and the testimony was not harmless error since there was no other evidence in the record to support a finding that the defendant was the cause of the harm to his girlfriend or that he caused harm to her knowingly.

Costs/Sentencing hearing/Costs of supervision. State v. Patterson | 2024-Ohio-2198 | 6th Appellate District | 06/07/2024 In a conviction by plea to failure to comply, the trial court erred by ordering in its judgment entry that the

defendant pay the costs of prosecution, supervision, confinement and appointed counsel since the court failed to impose those costs at the sentencing hearing; also, the costs imposed for supervision were inapplicable since the defendant was sentenced to a prison term, and a trial court has no authority to "sentence" a defendant to pay the fees for court-appointed counsel, Taylor, the court did not address court-appointed counsel fees under R.C. 2941.51(D) at the hearing and it had no authority to include the fees as a civil judgment within the sentencing entry without making findings on the record and without specifying "an amount that the person reasonably can be expected to pay," R.C. 2941.51(D).

Sealing/Felony offense of violence. State v. S.R.S. | 2024-Ohio-2195 | 2nd Appellate District | 06/07/2024 The trial court erred by granting an application to seal the applicant's record of conviction since R.C. 2953.32(A)(2) precludes sealing convictions for felony offenses of violence and, pursuant to R.C. 2901.01(A)(9)(c), the applicant's conviction of reckless operation of a motor vehicle to willfully elude or flee an officer after receiving a visible or audible signal from an officer to bring the person's motor vehicle to a stop, causing a substantial risk of serious physical harm to persons or property, a third-degree felony, R.C. 2921.331(B)(C)(5)(a)(ii), is classified as an offense of violence and ineligible for sealing pursuant to R.C. 2953.32; also discussed, statutory construction and law in effect in determining whether record could be sealed.

Evidence/Best evidence rule/Officer's investigation. State v. Leray | 2024-Ohio-2206 | 5th Appellate District | 06/07/2024 In a conviction of four counts of theft of a firearm and one count of breaking and entering of items allegedly taken from a barn on another person's property by the defendant, who had permission to use another non-residential building on the property, it was not plain error to admit the testimony of the investigating officer as to what he observed on a surveillance video that had a gap in it since claim that the best evidence rule, Evid. R. 1002, precluded the testimony is without merit since the rule did not apply because the officer's testimony pertained to what he observed during the course of his investigation.

Speedy trial. State v. Knott | 2024-Ohio-2289 | 2nd Appellate District | 06/07/2024 In a conviction of aggravated trafficking in drugs, the trial court erred by failing to dismiss the defendant's charge on statutory speedy-trial grounds since the defendant was not brought to trial within the 270-day limit where certain delays in trial were not reasonable, including the sua sponte trial continuance before the expiration of the statutory time limit where the trial court failed to journalize the reason for rescheduling a date beyond the statutory time limit; also, changes in R.C. 2945.73, extending the speedy trial limit for a 14-day grace period or other longer period if extended in some way by the accused is a substantive change, and it does not apply to this proceeding.

Evidence/Hearsay/Harmless error. State v. McCloud | 2024-Ohio-2190 | 1st Appellate District | 06/07/2024 In a conviction of, inter alia, aggravated robbery and attempted murder, arising from the defendant shooting the victim during an alleged gun sale between them, although the trial court erred in permitting hearsay evidence that the victim told the witness that the defendant shot him, the error was harmless since the victim testified that the defendant shot him in the chest, stomach and wrist and pointed the gun at his head and pulled the trigger but the gun did not fire, and the defendant's intent to murder the victim was established by the defendant firing multiple close-range shots, striking the victim.

Self-defense/Burden of proof. State v. Strange | 2024-Ohio-2199 | 6th Appellate District | 06/07/2024 In a conviction of felonious assault and improperly discharging a firearm at or into a habitation, the trial court erred by instructing the jury that the defendant had the burden to prove that he acted in self-defense in shooting the person he was arguing with since, pursuant to R.C. 2901.05, it was the state's burden to prove that the defendant had not acted in self-defense.

Venue/Insufficient evidence. State v. Smith | 2024-Ohio-2189 | 1st Appellate District | 06/07/2024 In a bench conviction of, inter alia, using weapons while intoxicated and OVI, the state failed to present evidence at the trial to demonstrate the venue where the only evidence presented to identify the location of the incident was the name of the road since the officers were township officers and not city officers and the prosecution failed to present evidence of the city, county or state where the offenses occurred, and the "Subject Test Refusal Report" was unsigned; dissenting opinion.

Sentencing/Restitution/Res judicata. State v. Barnes | 2024-Ohio-2184 | 8th Appellate District | 06/06/2024 Following the defendant's 2018 conviction of attempted breaking and entering and petty theft, and the court of appeals' subsequent grant of appellant-alleged victim's writ of mandamus for the trial court to consider the victim's claim to restitution, the trial court's subsequent setting a date to consider the victim's restitution request was error since the victim had the right to seek and be awarded restitution under Marsy's Law while the trial court had jurisdiction over the defendant's case, "[b]ut like most constitutional rights, this right can be forfeited if it is not invoked as necessary or required," Brasher, and once the trial court's decision became final, res judicata applied.

Self-defense/Bona fide belief of imminent danger. State v. Guffie | 2024-Ohio-2163 | 8th Appellate District | 06/06/2024 In a conviction of murder and attempted murder, the jury's rejection of the defendant's self-defense claim was not error since the evidence established that the defendant contributed to creating the situation giving rise to the shooting and that the defendant did not have a bona fide belief that he was in imminent danger of death or serious bodily harm; also discussed, transferred intent self-defense, inference stacking, ineffective assistance, double hearsay, excited utterance statements made by a victim who did not testify and officer's testimony about shell casings and a ballistic match from a prior murder and flight instruction.

Murder/Self-defense. State v. Martin | 2024-Ohio-2172 | 8th Appellate District | 06/06/2024 Conviction of murder was not against the weight of the evidence since the state demonstrated beyond a reasonable doubt that the defendant did not act in self-defense by shooting his cousin, with whom he had a recent dispute, in the back from a neighbor's roof when it was relatively dark, the defendant was not armed and was not actively attempting to enter the defendant's house, but instead had come to repay the defendant money to

settle a dispute and had his back toward the defendant when the defendant began shooting from a concealed position on the roof of a neighbor's house that he had climbed onto after he heard someone approach his house and recognized his cousin near the window of his house.

Plea/Validity/Concession of error. State v. Green | 2024-Ohio-2174 | 8th Appellate District | 06/06/2024 In a conviction by guilty plea to strangulation, R.C. 2903.13, and misdemeanor assault, R.C. 2903.13, the state concedes that the trial court erred by omitting any discussion of the defendant's Fifth Amendment privilege against compulsory self-incrimination during the plea colloquy, Crim.R. 11(C)(2)(c).

Trial/Cumulative error/Juror contact/DNA evidence. State v. Knight | 2024-Ohio-2176 | 7th Appellate District | 06/06/2024 In a conviction of, inter alia, two counts of aggravated murder, the court of appeals holds that the cumulative nature of errors in the trial violated the defendant's fundamental right to a fair trial by denying the defense counsel time to properly prepare as to the unique issue presented of possible improper juror contact before the conducting of individual juror voir dire, and the court also erred by limiting the defendant to the remedy of a trial continuance in light of a year's delay in disclosing favorable DNA identification information and prosecutorial wrongdoing that was similar to that conducted in the defendant's other criminal case since the cumulative effect of the errors constituted a deprivation of a fair trial; dissenting opinion filed.

Appeal/Final appealable order. State v. Stewart | 2024-Ohio-2150 | 1st Appellate District | 06/05/2024 The court of appeals holds that it has jurisdiction to consider an appeal from a conviction of domestic violence entered by a municipal court since the fact that the finding of guilt and sentence might be recorded in separate entries on a municipal court judge's sheet is irrelevant for purposes of appealability if all four components required by Crim.R. 32(C) exist on the trial judge's sheet and it is one document for purposes of Crim.R. 32(C), even if it contained separate dated entries for the finding of guilt and the sentence imposed, and the court of appeals holds its prior case law holding otherwise is overruled.

Ineffective assistance/Cross-examination/Continuance. State v. Brown | 2024-Ohio-2148 | 1st Appellate District | 06/05/2024 On remand to the court of appeals from the Supreme Court of Ohio after determining the evidence was sufficient to support a robbery conviction and that the defendant waived any Brady claim by not seeking a continuance or mistrial, the court of appeals holds that the defense counsel was not ineffective for not requesting a continuance after learning at trial that the victim conducted her own investigation since the defense counsel's decision to cross-examine the victim then, instead of seeking a continuance, was a strategic decision that cannot form the basis of a claim for ineffective assistance of counsel, nor does the defendant show how he was prejudiced.

Trial/Jury trial waiver. State v. Mastrobuono | 2024-Ohio-2154 | 9th Appellate District | 06/05/2024 In a bench conviction of defrauding creditors, R.C. 2913.45(A)(1)/(B), the trial court violated the defendant's right to a jury trial, R.C. 2945.05, because there is no evidence in the record that the defendant acknowledged the jury trial waiver to the trial court since the trial court never addressed the defendant to provide him with an opportunity to "acknowledge to the trial court that [he] wishe[d] to waive the right to a jury trial," Lomax.

Firearms regulation/Constitutionality. State v. Striblin | 2024-Ohio-2142 | 5th Appellate District | 06/04/2024 In a conviction by a no contest plea to inducing panic and of illegal possession of a firearm in a liquor permit premises, the state did not meet its burden to show that the illegal possession statute is consistent with the historical tradition of firearms regulation, Bruen, and thus the defendant's constitutional challenge against R.C. 2923.121(A) is meritorious, and the court of appeals reverses the conviction for illegal possession of a firearm in a liquor permit premises.

Animal/Physical control/Electronic device. Grandview Hts. v. Savko | 2024-Ohio-2139 | 10th Appellate District | 06/04/2024 Conviction of violating city's "dogs running at large" ordinance, by a person knowingly permitting a dog to run at large on public property, was supported by sufficient evidence of the defendant failing to use a leash or any other object serving the same purpose as a leash since the electronic collar worn by the defendant's dog that could be activated by a hand-held transmitter to provide a shock or alternative stimulation to the dog for training or control purposes did not meet the standard set forth in the ordinance; the electronic collar does not constitute "other physical control device" as used in the ordinance.

Evidence/Hearsay. State v. Cleveland | 2024-Ohio-2126 | 11th Appellate District | 06/03/2024 In a conviction of theft of motor scooters from a store, the trial court erred by admitting documentary and photographic material not properly authenticated that was provided by the owner of the store where the scooters were stolen from as well as the owner's hearsay testimony concerning that material that was based on a text message to the store owner from a salvage company that included a photocopy of the receipt given to the person who brought the scooters to the scrap company, the dollar amount of the transaction and the identification used by the person who scrapped the scooters, and the defendant's substantial rights were prejudiced because, without the improperly admitted evidence, there was minimal evidence to link the defendant to the otherwise unidentified person who scrapped the scooters, Evid.R. 901(A).

Reconsideration/Consecutive sentences. State v. Foster | 2024-Ohio-2075 | 8th Appellate District | 05/30/2024 In an application for reconsideration, App.R. 26(A)(1), the court of appeals grants the application, in part, finding that the trial court erred in imposing consecutive sentences for involuntary manslaughter and murder without making any of the findings required by R.C. 2929.14(C)(4) at the sentencing hearing or in the journal entry; the trial court partially complied with Crim.R. 11(C)(2)(a) in informing the defendant about mandatory imprisonment and consecutive service of the firearm specification and the appellant failed to demonstrate prejudice; remanded for re-sentencing on consecutive sentences.

Robbery/Physical harm/Recklessness. State v. Cunningham | 2024-Ohio-2032 | 10th Appellate District | 05/28/2024 In a conviction of four counts of second-degree felony robbery, R.C. 2911.02, each with repeat violent offender specifications, although R.C. 2911.02 does not identify a mental state for the physical harm element of robbery, the trial court correctly instructed the

jury that the physical harm element of robbery required proof of the mental state of recklessness since "[w]hen language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly," R.C. 2901.21(C)(1).

Prosecutorial misconduct/Closing argument/Plausibility of defense theory. State v. Cowan | 2024-Ohio-2028 | 3rd Appellate District | 05/28/2024 In a conviction of rape of a minor, the prosecutor did not commit misconduct in the closing argument by describing what the victim experienced during a nurse's sexual assault examination where the prosecutor's statements were based on the evidence presented during the trial and did not improperly express a personal opinion on the truthfulness of the witnesses and, moreover, the credibility of the defendant and the minor was the main argument advanced by the defendant at trial, and the prosecutor did no more than invite the jury to consider the plausibility of the defense theory that the defendant's wife and the victim conspired to frame him.

Plea/Withdrawal/NGRI/Waiver. State v. Pennington | 2024-Ohio-2020 | 12th Appellate District | 05/28/2024 In a conviction by plea of guilty in two cases to failure to comply with an order or signal of a police officer and of OVI following the defendant's withdrawal of his not guilty by reason of insanity plea [NGRI], the trial court did not err by denying the defendant's motion to withdraw his plea because "when a defendant enters a plea of [NGRI] and then later enters a plea of guilty without formally withdrawing the [NGRI] plea, the defendant has waived any argument pertaining to the insanity defense," McQueeney; also discussed, ineffective assistance of counsel.

Violating a protection order/Lack of service. State v. Hart | 2024-Ohio-2037 | 11th Appellate District | 05/28/2024 Conviction of violating a protection order, R.C. 2919.27, was not supported by sufficient evidence since there is no evidence the defendant was served with the protection order or that he had constructive notice as required by R.C. 2919.27(D) since neither the 10-A Form nor the deputy's testimony regarding a LEADS notation provide evidence as to the manner or date of service by the clerk to allow a finder of fact to determine whether the service comported with the Civil Rules.

Sentencing/Allied offenses/Plea/Judicial release revocation. State v. Alvendia | 2024-Ohio-2012 | 7th Appellate District | 05/24/2024 In a conviction by plea of guilty to possession of drugs and to two counts of possession of fentanyl-related compounds and subsequent violation of judicial release and imposition of consecutive prison sentences totaling 42 months, the trial court did not err by not merging the offenses as allied offenses of similar import, R.C. 2941.25, where the offenses arose from two different incidents occurring over three months apart, and thus were committed separately; also, the trial court complied with Crim.R. 11(C)(2) when accepting the guilty plea and also complied with R.C. 2951.041(F) in terminating judicial release, and the trial court was not required to conduct another Crim.R. 11(C)(2) colloquy at the judicial release revocation hearing.

Search/Suppression. State v. McPeek | 2024-Ohio-2008 | 2nd Appellate District | 05/24/2024 In a conviction by plea to tampering with evidence, the trial court did not err in denying a motion to suppress evidence and sentencing the defendant to community control sanctions, the investigating officers did not have reasonable cause to believe the defendant was at the property since the officers did not knock on the door of the house and walked on the driveway to the backyard where the defendant and others were not observable from the driveway and interacted with the defendant, and thus the officers did not have a license to enter the curtilage and interact with the defendant.

Expert/Fingerprint expert/Crim.R. 16(K)/Evid.R. 702(B). State v. Brown | 2024-Ohio-1981 | 8th Appellate District | 05/23/2024 In convictions of aggravated burglary, rape, felonious assault and felonious assault, arising out of the victim's allegations that the defendant physically and sexually assaulted him, the defendant was not denied a fair trial by the trial court's permitting a police detective to testify as a fingerprint expert where the state complied with the Crim.R. 16(K) requirements since the detective's expert report testimony was consistent with the results contained in the expert report that was disclosed to the defendant, and the detective's testimony was admissible as expert testimony pursuant to Evid.R. 702(B) and "the reliability of fingerprint evidence is well established," Belton.

Sentencing/Jail-time credit. State v. Church-Green | 2024-Ohio-1996 | 10th Appellate District | 05/23/2024 Trial court's dismissal of misdemeanor charges in the municipal court on speedy trial grounds, R.C. 2945.73(C)(1), based on the defendant being held in jail prior to her conviction of the charged misdemeanor offenses was error since the defendant was also being held in jail for a felony offense charge in a separate case based on the same conduct during the time she was awaiting trial on the misdemeanor charges, and thus she was not eligible for discharge since she was also being held in jail for the felony charge, and thus not being held in jail in lieu of bond awaiting trial "solely" on the pending misdemeanor charges, Hart and Johnson; dissenting opinion.

Plea/Crim.R. 11/Guilty plea. State v. Smith | 2024-Ohio-1979 | 8th Appellate District | 05/23/2024 In convictions in two cases by plea to two counts of OVI, aggravated vehicular assault, receiving stolen property, criminal damaging and having a weapon while under disability, the defendant's plea did not constitute an Alford plea since at no point during the Crim.R. 11 plea hearing did the defendant assert his innocence, and when the trial court advised him that by entering a plea of guilty, he would be admitting the charged offenses, the defendant stated that he understood and that he was pleading guilty to the offenses, and his claims of innocence only came at the sentencing hearing.

Evidence/Hearsay/Evid.R. 803(4)/Medical diagnosis and treatment. State v. Warner | 2024-Ohio-1949 | 1st Appellate District | 05/22/2024 In a conviction of statutory rape of the 12 year-old daughter of the defendant's girlfriend, R.C. 2907.02(A)(1)(b), although the court of appeals stated that portions of the forensic interview were not statements made for medical diagnosis and treatment, the victim's statements during an interview with a social worker/forensic interviewer describing the sexual acts performed by the defendant on her were necessary for medical diagnosis and treatment since the information helped the interviewer assess whether further treatment

was necessary and admissible as an exception to hearsay pursuant to Evid.R. 803(4), Muttart and Arnold.

Violating a protection order/Copy of order/Double jeopardy. State v. Tarrance | 2024-Ohio-1952 | 1st Appellate District | 05/22/2024 In a bench conviction of violating a protection order, R.C. 2919.27, the trial court committed plain error by admitting a copy of the protection order that was not certified or testified to as correct by a witness who compared the copy with the original order as required by Evid.R. 901, Evid.R. 902 or Evid.R. 1005, and thus the evidence was insufficient to support the conviction, Boone; since the conviction is reversed due to insufficient evidence, the double jeopardy clause bars a re-trial, Thompkins.

Weapon offenses/Carrying a concealed weapon. State v. Storms | 2024-Ohio-1954 | 1st Appellate District | 05/22/2024 In a conviction of carrying a concealed weapon, R.C. 2923.12(A)(2), the court of appeals reverses the trial court's denial of a motion to dismiss the indictment since the state concedes that the U.S. Supreme Court's decision in Bruen applies to the defendant's motion, and the court of appeals remands for a determination whether Ohio's firearm regulation under the carrying a concealed weapon statute is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms under the U.S. and Ohio constitutions.

Search/Cell phone search/Harmless error. State v. Hikec | 2024-Ohio-1940 | 5th Appellate District | 05/20/2024 In a conviction of felonious assault, two counts of aggravated possession of drugs and two counts of having weapons while under disability, although the trial court erred by denying a motion to suppress the digital evidence obtained through law enforcement's execution of a cell phone warrant to search the text messages and video used to also charge the defendant on drug and gun charges that were earlier than the date of the offenses against the victim, and thus the good faith exception did not apply, any error was harmless in light of the trial court's jury instruction not to consider as evidence that the defendant owned or possessed any one or more of the specific firearms he is alleged to have owned or possessed on the dates alleged in the indictment; also discussed, Evid.R. 404(B).

Appeal/Plain error claim not preserved. State v. Wheelock | 2024-Ohio-1913 | 9th Appellate District | 05/20/2024 In a conviction of sexual battery, R.C. 2907.03(A)(2), the court of appeals declines to consider the defendant's claim that the trial court erred by allowing evidence to be introduced as exhibits, a rape shield kit and the state bureau of investigation results of the rape shield evaluation, without a proper foundation for either of the exhibits to be introduced, since the defendant failed to object to the testimony pertaining to the exhibits when introduced and only later objected when the state moved to admit them into evidence, the court of appeals declined to sua sponte undertake a plain-error analysis where the defendant failed to do so, Carter.

Plea/Crim.R. 11(C)/Probation. State v. Hicks | 2024-Ohio-1939 | 5th Appellate District | 05/20/2024 In a conviction by plea of guilty to theft, R.C. 2913.02(A)(1) and (B)(2), plea was not validly made since the defendant did not subjectively understand his possible sentence and, because the trial court failed to advise the defendant by waiving the pre-sentence investigation that he was ineligible for probation, the trial court did not substantially comply with Crim. R. 11(C).

Post-conviction relief/Ineffective assistance. State v. Jackson | 2024-Ohio-1880 | 1st Appellate District | 05/17/2024 In a conviction of four counts of rape of a child under the age of ten that was affirmed, the trial court erred in denying a petition for post-conviction relief since the defense counsel provided ineffective assistance in presenting a motion to suppress the defendant's confession during a police interview where counsel failed to investigate and present evidence of the defendant's intellectual disabilities or to argue that the disabilities did not allow the defendant to validly waive his Miranda rights, and the fact that this was not considered by the trial court when analyzing the motion to suppress the confession prejudiced the defendant; one judge concurs in part and dissents in part.

Sealing/Rehabilitation. State v. J.B. | 2024-Ohio-1879 | 1st Appellate District | 05/17/2024 Denial of applications to seal records of seven misdemeanor offenses was error since the applicant provided evidence of rehabilitation, the trial court's finding that the applicant was not sufficiently rehabilitated was unsupported by the record since neither the victim nor the city or the state prosecutors objected to the applications, no victim statements were submitted to the court, there were no pending criminal proceedings, the applicant has been granted a certificate of qualification for employment and, moreover, the recent changes in the law demonstrate the Ohio legislature's intent to expand record sealing as an avenue for relief.

Plea/Misdemeanor/Right to counsel. State v. Conard | 2024-Ohio-1906 | 2nd Appellate District | 05/17/2024 In an uncounseled conviction by plea to first-degree misdemeanor theft, the defendant did not validly waive his right to counsel since the trial court provided no discussion of the potential penalties the defendant faced, including incarceration, possible defenses to the charges and circumstances in mitigation and the dangers and disadvantages of self-representation and, since there is nothing in the record to show what the defendant was told about his right to an attorney and how to obtain one, he cannot be confined, Crim.R. 44(B); remedy is to vacate the term of incarceration, including any suspended sentence, Lewis.

Evidence/Hearsay/Evid.R. 801(D)(2). State v. Carnegie | 2024-Ohio-1892 | 8th Appellate District | 05/16/2024 In a conviction of domestic violence, claim that the trial court erred in the admission of medical records and the testimony of the treating nurse of the alleged victim, with the defendant arguing that certain statements that remained in the medical records after redaction were unrelated to treatment and were inadmissible under Evid.R. 803(4), had merit as to one of the purported statements that the alleged victim told the nurse that the defendant made because the trial court did not take the necessary step of determining whether the defendant's hearsay statement was separately admissible, and the court of appeals finds that the statement was not admissible as a party admission, Evid.R. 801(C), (D)(2), since the alleged victim did not testify regarding this statement, and the nurse's testimony alone was insufficient to establish that the defendant's statement was an admission under Evid.R. 801(D)(2), and the defendant was prejudiced by its admission.

Sealing/Restitution. State v. L.K. | 2024-Ohio-1890 | 10th Appellate District | 05/16/2024 In an application to seal the record of a conviction of non-support of dependents, R.C. 2919.21, the trial court erred in granting the application since it was without authority to sua sponte amend a final judgment entry to remove restitution as a financial sanction 11 years after judgment was filed because "[a]n order of restitution imposed by the sentencing court on an offender for a felony is part of the sentence and, as such, is a final and appealable order," Danison, and restitution in the form of child support ordered as a financial sanction in the judgment entry must be satisfied before an application to seal the record can be addressed, P.J.F.

Double jeopardy/Collateral estoppel/ Inconsistent verdicts/Different counts. State v. Schall | 2024-Ohio-1896 | 8th Appellate District | 05/16/2024 Bench conviction for having weapons while under disability was not barred by the jury's acquittal of the defendant of other offenses that included an element of a weapon being involved since this case involved a single proceeding, with different charges heard by different factfinders at the defendant's request, and the defendant's conviction for having weapons while under disability was not barred by res judicata or collateral estoppel since "double jeopardy and collateral estoppel do not apply where the inconsistency in the responses arise out of inconsistent responses to different counts, not out of inconsistent responses to the same count," Callahan and Eason.

Plea/Reagan Tokes Law notifications/ Judicial release notifications. State v. Matthews | 2024-Ohio-1863 | 1st Appellate District | 05/15/2024 In a conviction by plea to, inter alia, two counts of rape, although the trial court was not required by Crim.R. 11(C)(2) to inform the defendant at the plea hearing of the Reagan Tokes Law notifications or of his eligibility for judicial release or other earned credit, the trial court erred at the sentencing hearing by failing to make the required proportionality findings under R.C. 2929.14(C)(4) to justify consecutive sentences, and the trial court also failed at the sentencing hearing to provide the defendant with the required notifications under the Reagan Tokes Law; remanded for re-sentencing.

Evidence/Hearsay/Harmless error. State v. Kelly | 2024-Ohio-1864 | 1st Appellate District | 05/15/2024 In a conviction of cocaine possession, even if the trial court erred by admitting strip-search and contraband reports an officer wrote after a strip-search of the defendant during his jail intake, any error was harmless since, even if the prior consistent statement exception to hearsay under Evid.R. 801(D)(1)(b) is inapplicable, the state did not offer the reports in response to the defendant's testimony, but rather the reports were offered during redirect examination of the officer to demonstrate the prior consistent statement exception under Evid.R. 801(D)(1)(b), and thus the reports were used to bolster the officer's testimony, not to rebut a charge of fabrication made by the defendant.

Sentence/Post-release control/ Supervision costs. State v. Bridges | 2024-Ohio-1967 | 4th Appellate District | 05/15/2024 In a conviction by plea of guilty to trafficking in a fentanyl-related compound, the court of appeals holds that the trial court may impose supervision costs associated with post-release control, that the trial court did not err by ordering an enforceable civil judgment for supervision and confinement costs and, although a trial court may assess fees without making an ability-to-pay finding, those fees should not have been included as part of a sentence for a criminal conviction, but instead should be listed separately as a civil matter in a separate entry, Taylor.

Post-conviction relief/Untimely filed/ Res judicata. State v. Porter | 2024-Ohio-1868 | 7th Appellate District | 05/14/2024 Following a 2018 bindover of the appellant, a juvenile at that time, as delinquent of five counts of adult rape, conviction by plea to one count of rape and voluntary dismissal of appeal, the trial court did not err in denying a 2023 pro se motion claiming that the appellant was never subject to a reverse bindover proceeding pursuant to R.C. 2152.131, treated as a successive motion for post-conviction relief, since the petition was untimely filed, and the appellant failed to meet the conditions for filing an untimely petition, R.C. 2953.23(A); the appellant's action is also barred by res judicata since the lack of an amenability hearing before transfer to the adult court should have been raised in a direct appeal, Black.

Search/Validity/Permission. State v. Clark | 2024-Ohio-1869 | 10th Appellate District | 05/14/2024 In a conviction of improperly handling a firearm in a motor vehicle, although the trial court erred by denying a motion to suppress a firearm found in the defendant's vehicle during a traffic stop since the defendant put the state on notice of his specific legal and factual grounds for challenging the validity of the search and seizure by suggesting pretext since officers claimed to have noticed an odor of marijuana emanating from the vehicle, but no marijuana ultimately was recovered from the vehicle; however, the defendant failed to demonstrate prejudice resulting from the trial court's error since he gave the officers permission to look in the vehicle that resulted in the officer finding the gun.

Littering/Protected speech. State v. Dolcini | 2024-Ohio-1843 | 9th Appellate District | 05/13/2024 In a bench conviction of littering, R.C. 3767.32(A), the trial court erred in denying the defendant's motion to dismiss that was based on First Amendment protected speech since all the residences where the defendant left materials had political signage in their yards and none of them had no trespassing signs posted, and thus, their consent to receive literature is "implied from community custom and tradition," Reddy.

Indictment/Dismissal. State v. Gunther | 2024-Ohio-1848 | 3rd Appellate District | 05/13/2024 An appeal by the state of the trial court's dismissal of indictment in a drug prosecution for Crim.R. 16 violations by the state was error since any failure by the state to comply with Crim.R. 16 as to disclosure of the BCI Confidential Source packet materials does not rise to the level of an error because the defendant was not prejudiced by the delayed disclosure.

Sentencing/Community control/Drug and alcohol conditions. State v. Ballish | 2024-Ohio-1855 | 11th Appellate District | 05/13/2024 In a conviction by plea to theft, R.C. 2913.02(A)(3), the trial court erred by imposing drug and alcohol related conditions as a community control provision since there are no facts contained in the record concerning the nature of the theft offense that would indicate it was in any way related to drugs or alcohol, Jones and Talty; cause is remanded.

Unlawful interest in a public contract. State v. Reynolds | 2024-Ohio-1835 | 12th Appellate District | 05/13/2024 Conviction of having an unlawful interest in a public contract, R.C. 2921.42(A)(1), was not supported by sufficient evidence since, although there was sufficient evidence for a rational juror to conclude that the defendant was informally lobbying for the adoption of a private project and that he was "employ[ing] the authority or influence of [his] office" to do so, R.C. 2921.42(A)(1), the state presented no evidence that the defendant "secure[d] authorization of any public contract" that is required by the statute as a prerequisite for a conviction since no secured, authorized contract ever existed.

Evidence/Child sexual abuse/Diagnosis and treatment/Competency to testify. State v. Burson | 2024-Ohio-1834 | 12th Appellate District | 05/13/2024 In a conviction of sex offenses, challenge to nine counts of rape to two of the defendant's granddaughters, R.C. 2907.02(A)(1)(b), by the defendant claiming the victim's statements made to a social worker at a children's center were inadmissible because the statements were not made to a medical professional, and also, because that victim was found to be incompetent to testify at trial was without merit since statements made to a social worker for purposes of medical diagnosis or treatment are admissible under Evid.R. 803(4) since the issue is not of the child's competency to testify "but whether her statements were made for purposes of diagnosis and treatment rather than for some other purpose," Muttart.

Sealing/Expungement. State v. K.W. | 2024-Ohio-1778 | 8th Appellate District | 05/09/2024 Denial of application to seal the record of misdemeanor assault, R.C. 2903.13, was error since, although the application was captioned as a "motion for expungement," appellant was only seeking to have her criminal record sealed, not expunged, and thus the record would not be destroyed and would be accessible to the state in the future, the applicant sought to seal her record so that she could renew her State Tested Nursing Assistant license because, since her conviction, the applicant has worked for a cleaning company in order to provide for her family and she also takes care of her mother, and apologized for the conduct that led to her conviction.

Post-conviction relief/Timely filed/Evidence dehors the record. State v. Nelson | 2024-Ohio-1792 | 5th Appellate District | 05/09/2024 Following a 2021 conviction of murder and having weapons under a disability that was affirmed, the trial court erred by denying a 2023 petition for post-conviction relief since the petition was timely filed because it was "filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication," R.C. 2953.21(A)(2)(a), and res judicata does not bar a claim of ineffective assistance of counsel where it is based on evidence dehors the record.

Speedy trial/Delay/Lack of prejudice. State v. Johnson | 2024-Ohio-1700 | 1st Appellate District | 05/03/2024 Grant of a motion to dismiss traffic charges on constitutional speedy trial grounds for a 15-month delay in service after the filing of charges was error since the court of appeals applied the Barker factors, finding the 15-month delay in the defendant's arrest was not excessively past the one-year, presumptively-prejudicial turning point, nor did the delay prejudice the defendant since she was unaware that the underlying charges had not been resolved, she was not under pre-trial incarceration and the state's delay in serving the defendant was not the result of a deliberate act, but merely negligence, but the trial court did not reach that question since it granted the motion to dismiss on constitutional grounds; remanded for consideration of whether the defendant's statutory speedy trial rights were violated.

Trial/Due process/Prosecutorial comment on a witness' credibility. State v. Hill | 2024-Ohio-1717 | 5th Appellate District | 05/02/2024 In a conviction of rape of a minor, R.C. 2907.02(A)(1)(b)/(B), the defendant was not denied due process by prosecutorial misconduct since, although the prosecutors asked improper questions of prosecution witnesses in an attempt to bolster the alleged victim's testimony, the trial court granted the defense objection to the questions, and a jury is presumed to follow the court's curative instructions, and the trial judge also sustained the objection to the prosecutor's comment attempting to bolster the victim's credibility by indicating the prosecutor's belief that the witness was telling the truth.

Self-incrimination/Miranda warnings. State v. Roberts | 2024-Ohio-1604 | 1st Appellate District | 04/26/2024 In a conviction of, inter alia, aggravated murder and aggravated robbery, the trial court erred in admitting the defendant's statements while he was in police custody but had not been given Miranda warnings and, excluding those statements, no direct evidence connected him to the exact time of the murder, resulting in prejudicial error since the officer's directives removing the defendant from his vehicle and placing him in close contact with the officer's car and the officer's accusing the defendant of a crime; also discussed, Evid.R. 404(B) and lack of a curative instruction; prior calculation and design; and tampering with evidence.

Expert testimony/Evid.R. 702/Harmless error. State v. Harris | 2024-Ohio-1579 | 8th Appellate District | 04/25/2024 In convictions of, inter alia, aggravated murder, although the trial court erred by allowing a state forensic video analyst to testify about certain portions of the contents of a video and render his opinion without first being qualified as an expert, Evid.R. 702, any error was harmless as to any portions of the witness' testimony that was expert opinion testimony since there was overwhelming evidence of the defendant's guilt, and the outcome of the trial would not have been different; also, Crim.R. 16 was complied with because the trial court found that the expert's report was not new discovery and, even if it was, it could have been discussed when it was received, four days before the jury was sworn in.

Evidence/Evid.R. 404(B)/Notice. State v. Kennedy | 2024-Ohio-1586 | 8th Appellate District | 04/25/2024 In a bench conviction of, inter alia, two counts of murder, the state's failure to give prior notice of its potential use of Evid.R. 404(B) evidence was not reversible error where the witness' name and testimony that the defendant objects to were disclosed to the defendant in the police report and the video interview "that was provided to the defendant prior to trial," Sadaghiani, and in a bench trial, a trial court is presumed to know and follow the law in arriving at its judgment unless it affirmatively appears to the contrary, Shropshire.

Speedy trial/Sua sponte continuance. Euclid v. Amiott | 2024-Ohio-1583 | 8th Appellate District | 04/25/2024 In a conviction against former officer for

use of excessive force during a traffic stop in one action and for assault and interfering with civil rights in another action, the defendant's speedy trial rights were violated since the record does not reflect that the trial court provided any reason for its sua sponte continuance that was beyond the expiration of the 90-day period, and nothing in the record indicates that the defendant waived his speedy trial protections.

Telephone harassment/Evidence/Text messages. Cleveland v. White | 2024-Ohio-1584 | 8th Appellate District | 04/25/2024 In a conviction of municipal code telephone harassment, claim that the trial court erred by allowing the victim to testify about the text message she sent to the defendant not to contact her again and the court's referencing the Ohio statute regarding telecommunications harassment, the defendant's claim that admitting the testimony was error because the text messages were "writings," pursuant to Evid.R. 1002 and should have been proven by producing the writing, was harmless error since the victim testified that she told the defendant to stop contacting her, and the victim submitted into evidence the emails from the defendant.

Search/Warrantless/Lack of Exigent circumstances. State v. Modreski | 2024-Ohio-1550 | 1st Appellate District | 04/24/2024 In a prosecution for obstructing official business and resisting arrest, the trial court's grant of motion to suppress a warrantless search of the defendant's residence to check on the defendant's infant granddaughter was not error since the information conveyed from the social services worker to the police did not suggest that the infant was in need of immediate aid, and thus there were no exigent circumstances justifying the warrantless search of the defendant's home, Fisher.

Jury/Inconsistent verdicts. State v. Omenai | 2024-Ohio-1571 | 9th Appellate District | 04/24/2024 In a conviction of felony murder, R.C. 2903.02(B)/(D), the defendant's claim that the trial court erred in denying his motion for a new trial or acquittal, arguing that the jury returned inconsistent verdicts, is without merit since "[t]he several counts of an indictment containing more than one count are not interdependent and an inconsistency in a verdict does not arise out of inconsistent responses to different counts, but only arises out of inconsistent responses to the same count," Lovejoy.

Restitution/Marsy's Law/Judicial release/Community control. State v. Zampini-Solarek | 2024-Ohio-1532 | 11th Appellate District | 04/22/2024 Following a 2017 conviction of, inter alia, aggravated theft, and the trial court's imposition of 48 months imprisonment and ordering the defendant to pay victim restitution of $204,000, the defendant was granted judicial release and ordered to, inter alia, serve five years of community control and to pay the victim a minimum of $520 restitution a month until paid in full, although the victim had standing under Marsy's Law to move the trial court to enforce the defendant's community control to pay full and timely restitution, the trial court's denial of the victim's motion to reimpose the defendant's prison sentence or order her to deliver a balloon payment was not error since R.C. 2929.20(K) is discretionary, the defendant is still legally obligated to pay restitution, and the trial court's denial of the victim's motion does not foreclose the victim from bringing a separate action to enforce the trial court's restitution order.

Evidence/Text messages/Evid.R. 612. State v. Powers | 2024-Ohio-1521 | 12th Appellate District | 04/22/2024 In a conviction of endangering children, R.C. 2919.22(B)(1), the trial court did not err by excluding from evidence certain text messages exchanged between the defendant and the victim's mother used to refresh the defendant's recollection at trial since the trial court properly excluded those text messages from evidence pursuant to Evid.R. 612 because the state, as the adverse party, did not request the text messages that the defendant used to refresh his recollection be admitted into evidence at trial; also discussed, Evid.R. 405(B).

Sentencing/Verdict forms. State v. Thomas | 2024-Ohio-1534 | 3rd Appellate District | 04/22/2024 In a conviction of, inter alia, domestic violence and inducing panic, the court of appeals reverses the judgment of conviction and sentence as to those offenses since the verdict forms fail to set forth the aggravating elements of the two crimes charged because in cases involving offenses for which the addition of an element or elements can elevate the offense to a more serious degree, the verdict form itself is the only relevant thing to consider in determining whether the dictates of R.C. 2945.75 have been followed, McDonald.

Evidence/Hearsay/Community control violation. State v. Tackett | 2024-Ohio-1498 | 2nd Appellate District | 04/19/2024 In a conviction by guilty plea to theft, imposition and subsequent violations of community control, the trial court did not err by permitting hearsay testimony that the defendant was discharged from a community-based rehabilitation facility for failing to complete the facility's program since community control sanctions were revoked as a result of his failure to complete the program, not based on the specific reasons he was discharged from the facility, the Rules of Evidence permit admission of hearsay evidence during community control revocation hearings and, moreover, the probation officer had actual knowledge of defendant's discharge because of the phone call and email from the facility and the discharge report.

Drug possession/Knowledge/Home ownership. State v. Smith | 2024-Ohio-1473 | 8th Appellate District | 04/18/2024 Bench conviction of drug possession and possession of criminal tools was not supported by sufficient evidence since "[t]he state essentially asks this court [of appeals] to infer knowledge of illegal marijuana found in plain view when a household member [the defendant's husband] is legally prescribed the drug based on their ownership of the residence" and there is no evidence presented that the defendant had knowledge, constructive or actual, that the controlled substances found upstairs were illegal or that any of the suspected criminal tools were intended for a criminal purpose, nor was the defendant in possession of drugs found in the basement since the basement had two sides, a laundry area and area that the defendant's husband, who was a barber, used as a barbershop and where marijuana was found, and no evidence was presented that the defendant had ready access to the barbershop area, nor any evidence that she had ever been in the barber's station area of the basement.

Sentencing/Marsy's Law/Appeal by state/Leave to file. State v. Ndubueze | 2024-Ohio-1414 | 12th Appellate District | 04/15/2024 In a conviction for multiple counts of gross sexual imposition and rape that was affirmed as supported by sufficient evidence and not against the weight of evidence, in an appeal by the state arguing that the trial court

erred by denying the victims their right to be present at the trial pursuant to Ohio Const. Art. I, Sec. 10a (Marsy's Law), R.C. 2930.09, and Evid.R. 615, was not considered by the court of appeals since the issues raised in the cross-appeal do not fall into any of the categories listed in R.C. 2945.67(A) that the state may appeal of right, and the state failed to seek leave under App.R. 5(C) to file its cross-appeal.

Protection order/Complaint/Dismissal/ Invited error. State v. Kraynak | 2024-Ohio-1428 | 11th Appellate District | 04/15/2024 In an appeal by the state of the trial court's dismissal of a complaint alleging violation of a protection order, since the state requested that the trial court determine whether sufficient evidence of contact existed, it cannot challenge the trial court's making that determination since the state did not file a written response to the motion to dismiss, nor did it at the hearing present any argument addressing the propriety of the trial court proceeding to determine if contact was made for purposes of the aggravated menacing statute on a Crim.R. 12(C) motion.

Telecommunications harassment/ Sufficiency of evidence. State v. Golga | 2024-Ohio-1410 | 9th Appellate District | 04/15/2024 Conviction of telecommunications harassment, R.C. 2917.21(A)(1), was not supported by sufficient evidence of purposeful intent where, although the defendant used profanity and an angry tone, he expressed that the city threatening to turn off his water supply was an attempt to harm and harass him and were statements of one who is threatened, not one who is intentionally seeking to harass, intimidate or abuse others; concurring and dissenting opinions.

Post-conviction relief/Findings of fact and conclusions of law. State v. Cepec | 2024-Ohio-1412 | 9th Appellate District | 04/15/2024 Following a conviction of, inter alia, capital murder and imposition of death sentence that was affirmed by the Ohio Supreme Court, the trial court's denial of the appellant's petition for post-conviction relief was error for failure to make findings of fact and conclusions of law on two grounds of relief raised by the petitioner, R.C. 2953.21(H), and any resolution of the remaining assignments of error in the appeal would be premature.

Cruelty to a companion animal/Search. State v. Easter | 2024-Ohio-1389 | 2nd Appellate District | 04/12/2024 In a conviction of cruelty against a companion animal, the trial court did not err in denying a motion to suppress a search of the defendant's premises without a warrant since it was a search pursuant to exigent circumstances based on the defendant's wife informing the police of her husband's shooting of the family dog, and the officers also heard noises that they believed to be made by the dog and indicating to them the dog was alive and in need of aid.

Plea/Withdrawal/Reagan Tokes notifications. State v. Boulware | 2024-Ohio-1388 | 2nd Appellate District | 04/12/2024 In a conviction by guilty plea to voluntary manslaughter that on appeal was remanded for the trial court to give the Reagan Tokes Act notifications at the sentencing hearing and in the judgment entry but, prior to the rehearing, the defendant filed a Crim.R. 32.1 motion to withdraw his plea, arguing that the failure to give the notifications violated the felony plea requirements in Crim.R. 11(C)(2) and rendered his guilty plea invalid, the trial court did not err in denying the motion since the defendant's claim is barred by res judicata because the claim could have been raised in his direct appeal and, moreover, the Reagan Tokes notifications are only required to be given at the sentencing hearing, not the plea hearing, Hodgkin.

New trial/Motion for leave to file/ Credibility. State v. Smith | 2024-Ohio-1360 | 8th Appellate District | 04/11/2024 Following 1995 convictions of defendants-brothers in separate trials for kidnapping and aggravated murder of the person who had allegedly shot defendants' cousin that were affirmed, the trial court erred by denying, without a hearing, the defendants' separate motions for leave to file a motion for a new trial, Crim.R. 33(A)(6) and (B), since the defendants were unavoidably prevented from timely discovering new evidence in light of their cousin's 2022 affidavit disavowing his testimony in the trials of the defendants, and the credibility of the cousin's statements does not factor into whether the defendants should be granted leave to file a motion for a new trial because the credibility of the evidence can only be considered in resolving the motion for a new trial itself, Minifee; remanded for the trial court to conduct a hearing on the motions for leave to file a motion for a new trial.

Suppression/Arrest by transit authority officer. State v. Thomas | 2024-Ohio-1361 | 8th Appellate District | 04/11/2024 In a prosecution for a minor misdemeanor traffic violation arising from an attempted traffic stop of the defendant by the city transit authority officers, the trial court's grant of motion to suppress was not error since, under the plain and ordinary meaning of the statute applying to transit authorities, the authority of transit authority police is limited to "transit facilities" operated by the transit authority, R.C. 306.35(Y), and any evidence obtained by the transit authority police who arrested the defendant at her home without a warrant nearly one month after other transit authority police attempted to stop the defendant for the alleged minor misdemeanor traffic violation on non-transit authority facilities was properly suppressed.

Right to counsel/Plea/Failure to comply with prior plea agreement. State v. Ellison | 2024-Ohio-1377 | 10th Appellate District | 04/11/2024 In a conviction of aggravated murder and imposition of a sentence of life imprisonment with parole eligibility after 30 years after the defendant refused to comply with his prior agreement to testify against the co-defendant, the defendant was denied his right to counsel since his attorney was unavailable when the situation arose and the trial court's substitution of another attorney, who happened to be at the court, resulted in the defendant being convicted without the benefit of the plea agreement since, by the time the state moved to vacate the defendant's plea agreement based on his refusal to testify against the co-defendant and before the trial court confirmed with defendant that he would not testify, the co-defendant had agreed to a plea agreement, and thus there was no pending proceedings against the co-defendant for the defendant to testify, with the court of appeals holding that the defendant was denied his right to counsel, requiring the reinstatement of his original plea agreement and sentencing thereunder.

Speedy trial/Marsy's Law. State v. Counts | 2024-Ohio-1362 | 8th Appellate District | 04/11/2024 In a prosecution for attempted murder and felonious assault, the trial court erred in dismissing the indictment for a speedy trial violation, R.C. 2945.71, since the "speedy trial time is tolled while the state awaits responses to its discovery

requests, pursuant to Crim.R. 16(C)," Borrero, and the delay caused by the victims' interlocutory appeal was a result of the defendant not agreeing to the victims' request that she not be present in the victims' house during the view of the house, causing the victims to file an interlocutory appeal that necessitated a delay, and "Marsy's Law expressly provides that a crime victim 'may petition the court of appeals for the applicable district' when a trial court's ruling implicates the victim's rights," McGinty, and an interlocutory appeal is also a tolling event under R.C. 2945.72(H).

Evidence/Electronic messages. State v. Hamrick | 2024-Ohio-1364 | 8th Appellate District | 04/11/2024 In a conviction for menacing by stalking and violating a protection order, the trial court did not err in the admission of electronic messages that the victim-recipient testified she knew were sent by the defendant because she only used the same specific messaging platform with the defendant and the way he spoke in the messages made it clear that the messages were from him, and she had personal knowledge about the content of the messages, Evid.R. 901(A) and Roseberry.

Dismissal/Failure of state to reserve right of future prosecution. State v. Moore | 2024-Ohio-1354 | 9th Appellate District | 04/10/2024 Following a conviction in 2017 by guilty plea to, inter alia, aggravated vehicular assault, and the victim's death in 2021, defendant was indicted for aggravated vehicular homicide, the trial court did not err in granting defendant's motion to dismiss since the state failed, at the time of the defendant's guilty plea, to expressly reserve the right to pursue further prosecution of defendant for homicide charges if victim later died, Dye; dissenting opinion.

Jury instructions/Felonious assault/ Reckless assault. State v. Metters | 2024-Ohio-1338 | 10th Appellate District | 04/09/2024 In a conviction of felonious assault against a peace officer and possessing criminal tools, the trial court erred by denying the defendant's request for a jury instruction on reckless assault, a lesser-included offense of felonious assault under R.C. 2903.11(A)(1), since there was testimony that the defendant was momentarily blinded as he claimed and, as a result, unaware that an officer's hand was through the broken door window, it is difficult to conceive how he would have known that swinging the bat at the door would "probably" result in striking the officers who had been standing outside when the defendant was maced through the broken door window, and an officer who was also at the defendant's home wrote in his report that the defendant "aimlessly" swung the bat at the officer attempting to enter defendant's house; dissenting opinion.

Obstruction of official business/ Sufficiency of evidence. Bedford Hts. v. Davis | 2024-Ohio-1281 | 8th Appellate District | 04/04/2024 Conviction for obstruction of official business, R.C. 2921.31(A), was not supported by sufficient evidence since a conviction requires an offender to act, and the mere refusal to answer an officer's questions about the person's identity or to provide his driver's license does not support a conviction since R.C. 2921.31 specifically requires an offender to act, and there was no evidence admitted at the trial that the defendant engaged in any overt act.

Witnesses/Confrontation/Video testimony/Harmless error. State v. Carter | 2024-Ohio-1247 | Supreme Court of Ohio | 04/04/2024 In a conviction of two counts of sexual battery of an adopted child between the ages of 17-19 years-old, R.C. 2907.03(A)(5), grant of state's motion for a state's out-of-state witness to testify via video conference was error since it violated the U.S. Constitution Sixth Amendment Confrontation Clause provision in the absence of sufficient case-specific findings of necessity, the lower courts' generalized concerns about COVID-19 risks and possible travel delays for one out-of-state witness did not constitute a "case-specific finding of necessity," Craig, but in light of the other admissible evidence presented at trial, including defendant's admissions of the sexual conduct to a friend and to the CEO of the school that employed him and that his daughter attended, it was harmless error.

Evidence/Admission/Bruton rule/ Self-authentication. State v. Gaines | 2024-Ohio-1275 | 8th Appellate District | 04/04/2024 In a conviction of felonious assault, admission of Instagram messages from co-defendant's account was not error since the co-defendant did not exercise her constitutional right not to testify and defendant was afforded the opportunity to cross-examine her, so the Bruton rule did not apply, and thus no limiting jury instruction was required; also, Instagram messages were self-authenticating, Evid.R. 902(11), since the messages from the social media company were obtained by a search warrant and included a written certification page, and the statements in the messages implicated both defendant and co-defendant in the assaults; also, admission of unauthenticated video was harmless error.

Evidence/Prior criminal history. State v. Wadlington | 2024-Ohio-1268 | 8th Appellate District | 04/04/2024 In a conviction of murder and two counts of felonious assault, the trial court did not err in limiting the admissibility of the victim's prior criminal history to only the "actual knowledge [defendant] had with respect to what occurred that night and her personal knowledge, if any at all, of specific instances with respect to her," and thus excluding a pending aggravated burglary charge and a felonious assault conviction that the defendant was unaware of since those cases could not have influenced her state of mind at the time of the shooting, Lane.

Search/Warrantless search. State v. Hayes | 2024-Ohio-1254 | 1st Appellate District | 04/03/2024 In a prosecution for aggravated trafficking in drugs and aggravated possession of drugs, the trial court erred in granting a motion to suppress where defendant had been admitted to a hospital and during a nurse's routine inventory of defendant's belongings, she found what she believed to be illegal drugs and contacted security, who called the police and an officer conducted a warrantless search of defendant's belongings and found the baggie that contained, based on the officer's training and experience, methamphetamine, and a mere re-examination by a government agent of that which was already inspected by a private actor does not violate the Fourth Amendment, Jacobsen.

Self-defense/Objective reasonableness. State v. French | 2024-Ohio-1256 | 1st Appellate District | 04/03/2024 In a bench trial conviction of two counts of felonious assault, the state disproved at least one element of self-defense beyond a reasonable doubt by showing that defendant's belief of imminent bodily harm was not objectively reasonable

where, although the trial court found defendant subjectively had an honest belief of imminent bodily harm, her belief was not objectively reasonable and was disproportionate to any apparent danger perceived from the victim lunging down the stairs towards defendant where jury accepted the victim's testimony that she did not have a weapon; also discussed, exclusion of a witness' prior criminal history, Evid.R. 609.

Sealing/Sexually-oriented offenses. State v. Yoder | 2024-Ohio-1264 | 5th Appellate District | 04/03/2024 The trial court erred in denying an application to seal a record pursuant to R.C. 2953.32 in effect at the time the applicant filed his application to seal and at the time of the trial court's ruling since the trial court's interpretation of the word "when" in R.C. 2953.32(A)(3) as meaning "once" the offender is subject to R.C. Ch. 2950, rather than "while" the offender is subject to R.C. Ch. 2950, would render subsection (B)(1)(a)(iv) meaningless since when the applicant filed his application, he no longer "was subject" to the requirements of Chapter 2950.

Sex offenses/Due process/Evidence/ Confidential records. State v. Hammonds | 2024-Ohio-1259 | 1st Appellate District | 04/03/2024 In the court of appeals' sua sponte consolidation of appeals of two defendants who were tried jointly and convicted of multiple counts of rape and gross sexual imposition of minors related to the defendants, the trial court violated defendants' due process rights by denying them access to otherwise confidential county department of job and family services records, and the court of appeals holds that defendants must have reasonable access to those records that are relevant and material to their defense; remanded for a new trial.

Miranda/Traffic stop/Non-custodial. State v. Olan | 2024-Ohio-1257 | 1st Appellate District | 04/03/2024 In a plea of no contest to engaging in prostitution, the trial court did not err by overruling a motion to suppress statements made to officers after a traffic stop of the vehicle defendant was driving because he was not in custody when he made the statements since the "temporary and relatively non-threatening detention involved in a traffic stop or Terry stop does not constitute Miranda custody," Fields, where stop was brief and questioning occurred during an investigative detention in a traffic stop; concurring and dissenting opinions.

Sealing/Restitution. In re L.B. | 2024-Ohio-1255 | 1st Appellate District | 04/03/2024 In an application to seal 20 juvenile records, in which one record was denied sealing for lack of compliance with a restitution order, the trial court erred since the juvenile court lacked jurisdiction after applicant turned 21 years-old, and the state concedes that the decision in In re I.J. requires reversal because the juvenile court issued its decision 13 years after it lost jurisdiction over the applicant, the restitution order was terminated, the record evidences applicant's rehabilitation and the application would have otherwise been granted.

Sealing/Appeal/Lack of service/ Appropriate venue. State v. R.L.W. | 2024-Ohio-1249 | 10th Appellate District | 04/02/2024 Dismissal of application to seal the record of the dismissal of a charge for first-degree felony aggravated robbery in a municipal court case pursuant to former R.C. 2953.52 was error since, because the clerk of courts did not accomplish service as required by Civ.R. 58(B), the period to appeal the judgment never began to run and thus the appeal was timely; on the merits, the trial court erred in concluding that it was not the "appropriate venue" for the application to seal the dismissal of the aggravated robbery charge since former R.C. 2953.52(A)(1) permitted a defendant named in a dismissed complaint to apply to the court in which the dismissal of the complaint was entered for an order sealing the records of the dismissed case, and the trial court erred in holding otherwise.

Sentencing/Judicial release. State v. Platt | 2024-Ohio-1330 | 4th Appellate District | 04/02/2024 In an appeal by the state of grant of judicial release following the defendant's conviction of involuntary manslaughter and endangering children that were merged for sentencing, in granting judicial release the trial court made the findings required by R.C. 2929.20(J) by considering the relevant R.C. 2929.12 factors and finding: (1) the teen-age children found the firearm in a gun cabinet that defendant typically locked; (2) defendant had instructed the juveniles not to touch the firearm; and (3) defendant did not remove the gun from the cabinet, and these facts supported the trial court's determination that the defendant's conduct was less serious than some involuntary manslaughter convictions.

Ineffective assistance/Harmless error. State v. Platt | 2024-Ohio-1331 | 4th Appellate District | 04/02/2024 In a conviction of involuntary manslaughter and endangering children in the death of a child shot by the defendant's minor son at the defendant's house, even if defense counsel provided ineffective assistance by not challenging admission of certain testimony and evidence, any error was harmless since the remaining evidence established that the defendant: stored loaded guns in an unlocked gun cabinet accessible to the children, and he knew they had an interest in weapons; one of the defendant's sons testified that, on the date of the fatal accident, the defendant had shown the three boys a "pistol," and the defendant spent most of the night of the shooting in his bedroom, and thus he was generally unaware of the children's activities, constituting sufficient evidence that the defendant's actions and inactions caused the victim's death as a proximate result of committing the offense of endangering children.

Confession/Voluntariness. State v. Ferguson | 2024-Ohio-1239 | 3rd Appellate District | 04/01/2024 In a conviction by plea to two counts of rape when the victim was 15 and 16 years-old, the trial court did not err by denying a motion to suppress confession where the totality of the circumstances does not suggest that defendant's will was overborn or that his capacity for self-determination was critically impaired, no threats were made by detectives interviewing defendant at the sheriff's department, the recorded interview occurred about one hour after defendant had been arrested, the tone between defendant and the two detectives remained conversational for the entire discussion, the record contains no indication that defendant experienced any physical deprivation or mistreatment and the detectives did not make threats or false promises.

Education

Employment/Limited contract// Nonrenewal. Jones v. Kent City School Dist. Bd. of Edn. | 2024-Ohio-2844 | Supreme Court of Ohio | 07/31/2024 Board of education's decision not to renew teacher's limited teaching contract, affirmed by trial court, was properly reversed by the court of appeals since the board failed to comply with R.C. 3119.111(E) in not completing all three formal observations required

Education (Continued)

for declining to renew teacher's limited contract where the board's third observation consisted of observing a remote meeting of teacher's students in the absence of teacher, who could not attend for medical reasons, and even though teacher's medical leave made observation impossible, statutory compliance was not excused and the teacher should have been considered re-employed at the expiration of the contract; pursuant to R.C. 3319.11(E) and (G)(7), the board is ordered to reinstate the teacher, and the case is remanded to the common pleas court for further proceedings consistent with the court's decision, including calculation of teacher's back pay.

Contract/Breach/Faculty rules. Croce v. Ohio State Univ. Bd. of Trustees | 2024-Ohio-2138 | 10th Appellate District | 06/04/2024 In researcher's breach of contract action against university for removing him as chair following investigation into alleged misconduct, trial court erred in granting university's motion for judgment on the pleadings as to researcher's common law breach of contract claims where the terms of the parties' contract required university to work with researcher to rehabilitate his reputation after he was found not to have committed misconduct, and researcher's claims against university for taking non-disciplinary actions against him should not have been dismissed because university may have breached faculty rules.

Environmental and Natural Resources

Mineral interests/Mining permit/Appropriation/Standing/Dissent. State ex rel. Sahbra Farms, Inc. v. Streetsboro | 2024-Ohio-2506 | 11th Appellate District | 06/28/2024 Denial for lack of standing of relator-mineral lease holder's petition for a writ of mandamus seeking to compel city to initiate appropriation proceedings, arguing that city's denial of a conditional use permit for surface mining constituted a regulatory taking, is reversed where the merits of relator's takings claim were incorrectly conflated with relator's standing to bring the action—just because a plaintiff's claim might fail on the merits does not deprive the plaintiff of standing to assert it—and the error was not harmless because the question remains as to relator's property interests in the mineral or surface estate and the payments provided for in the mineral lease; there is a dissenting opinion in this case.

Mineral interests/Identification/Drilling location. Tera, L.L.C. v. Rice Drilling D, L.L.C. | 2024-Ohio-1945 | Supreme Court of Ohio | 05/23/2024 In surface owner-lessor's action against energy companies-lessees, alleging that energy companies' drilling activity in a geological formation not specifically identified in the parties' lease constituted willful trespass and conversion, trial court's partial summary judgment, affirmed by court of appeals, in favor of owner is reversed where the parties' lease permitted drilling in a geological formation identified by the phrase "commonly known as," but the questions remain whether the lower courts relied on the common meaning or the technical, stratigraphic meaning of the name of the geological formation or whether the lower courts were certain, without turning to extrinsic evidence, that the common meaning of the name of the geological formation at the time the parties entered into the lease was the same as its technical, stratigraphic meaning; there is a dissenting opinion.

Estate Planning, Trust and Probate

Name change/Records/Sealing. In re Change of Name N.C.J. to B.A.J. | 2024-Ohio-2474 | 9th Appellate District | 06/28/2024 Denial by probate court of appellant's application to seal records of name change was error where appellant submitted an application for name change, which included a form to waive publication and to seal records due to safety issues, and the name change was granted, but the court failed to make a determination whether appellant submitted satisfactory proof to show that open records or published notices would jeopardize personal safety, pursuant to R.C. 2717.11.

Trust/Property division/Settlement/Amendment. Gilbert v. Mollis | 2024-Ohio-2246 | 9th Appellate District | 06/12/2024 In sister-co-trustee's action against brother-co-trustee, alleging that he failed to cooperate in the disposition of mother's trust property, resulting in a settlement agreement, trial court erred in modifying the terms of the agreement where neither party moved for a court order to amend the agreement, and the agreement provided for equal distribution of the assets, but the court's unilateral division of the remaining assets was not equal.

Inventory/Transfer-on-death/Affidavit/Validity. Estate of Ortiz v. Cicconetti | 2024-Ohio-1958 | 5th Appellate District | 05/21/2024 In action for concealment of assets and related claims, along with exceptions to inventory, filed by plaintiff-daughter-in-law against defendant-executrix/step-daughter, trial court erred in finding that decedent's transfer-on-death affidavit leaving real property to defendant was invalid, R.C. 5302.22, where, although a page was added to the affidavit after it was notarized, the affidavit complied with R.C. 147.011(C) and 147.551 because the notary acknowledged the authenticity of the signature, and R.C. 5302.22(D) did not require formalities be done prior to the notarial act, so the affidavit was sufficient without the added page.

Guardianship/Removal/Less restrictive placement. In re Guardianship of Hyde | 2024-Ohio-1878 | 1st Appellate District | 05/17/2024 Denial of ward's mother's motions to remove guardian-nonprofit organization and to appoint mother as guardian is affirmed since evidence shows that guardian has been involved and has been actively working toward the goal of identifying a less restrictive placement that will meet ward's complex needs, and there is no evidence that guardian took any measures to interfere with mother's advocacy, R.C. 2109.24; as well, mother's claim that guardian failed to satisfy industry standard guidelines is without merit where mother seemingly equates "industry standard guidelines" to the guardianship provision in the Ohio Rules of Superintendence for the Courts, Sup.R. 66, but these rules are administrative directives only and do not function as, or have the force of, law in the same manner as rules of practice and procedure.

Contingent claim/Arbitration. Hogg v. Grace Community Church | 2024-Ohio-1729 | 12th Appellate District | 05/06/2024 In plaintiffs-heirs' action against defendants-broker and beneficiaries, seeking a declaration that beneficiary-designation agreements were void, trial court did not err in granting broker's motion to stay and compel arbitration where estate's obligation to indemnify broker pursuant to agreement did not expire when the limitations period for presenting creditors' claims had ended under R.C. 2117.06 because the indemnification claim was contingent and did not exist at the time of decedent's death, the limitations period under R.C. 2117.37 applied, and the broker did not waive the right to arbitration due to participation in litigation.

Tax/Farmland/Discount/Recoupment. Estate of Davidson | 2024-Ohio-1722 | 9th Appellate District | 05/06/2024 In settlement of estate where heirs filed an exception to executor's partial account for his failure to register for current agricultural use valuation (CAUV) discounts that would have lowered the property's tax bill, trial court's order that recoupment penalties be added to the estate account is affirmed where executor failed to seek preparation of a transcript of the hearing, as required by App.R. 9(B), the regularity of trial court's proceedings must be presumed, and its judgment is affirmed; executor's argument that the buyer of property was responsible under the purchase agreement for registering for CAUV discounts and for any recoupment penalties is without merit.

Trust/Real property/Discretion. Wynn v. Crumm | 2024-Ohio-1447 | 1st Appellate District | 04/17/2024 In plaintiff-beneficiary's action against defendant-trustee, seeking to prevent sale of real estate held in trust, trial court erred in finding that defendant was required to distribute real estate to beneficiaries in-kind where the unambiguous terms of the trust agreement granted defendant discretionary authority to sell real property and to make distribution in money or in-kind, and discretionary powers did not inherently conflict with defendant's fiduciary duties under the trust agreement, R.C. 5801.04.

Primary devise/Anti-lapse statute/ Law of case. Diller v. Pennucci | 2024-Ohio-1244 | 3rd Appellate District | 04/01/2024 In action by plaintiff-sister of decedent seeking a declaration that the bequest to decedent's brother lapsed when brother pre-deceased decedent, trial court did not err in finding that the anti-lapse statute did not apply to the primary devise where, although the R.C. 2107.52 anti-lapse statute was later revised to apply retroactively, when decedent died, the property intended for his brother was transferred to plaintiff under the old statutory language so she had a vested interest, and the law of the case doctrine prevents re-litigation of issue raised by brother's heirs.

Family Law and Domestic Relations

Dissolution/Separation agreement/ Fraud/Relief from judgment. Krueger v. Krueger | 2024-Ohio-2863 | 11th Appellate District | 07/29/2024 Following judgment in dissolution of marriage action, trial court did not err in granting wife's Civ.R. 60(B)(3) motion for relief from judgment based on evidence of husband's fraud where an oral hearing was not required because the parties presented the merits of their positions through evidentiary materials, husband failed to disclose all information regarding the sale of the parties' marital interest in a business and made false representations in court, and due to evidence of fraud, there was no mutuality of understanding as to the material term of the parties' separation agreement.

Adoption/Consent/Court order. In re Adoption of A.M.G. | 2024-Ohio-2853 | 12th Appellate District | 07/29/2024 In maternal grandmother's petition for adoption of child, trial court erred in finding that father's consent was required, R.C. 3107.07(A), where father failed to communicate with child in the year preceding filing of adoption petition and father did not have justifiable cause for failing to visit or support child because, although court order prohibited father from visiting or communicating with child during paternal grandmother's visitation time, nothing in the order prevented father from communicating with child through maternal grandmother or from seeking his own visitation time.

Support/Child/Spousal/Imputed income/Property division. Palomino v. Palomino | 2024-Ohio-2873 | 4th Appellate District | 07/23/2024 In divorce action, trial court erred in its awards of child and spousal support and division of marital assets where the court failed to make the required findings under R.C. 3119.01(C)(17) regarding wife's employment status before imputing wife's income and also failed to make the required child support computation worksheet part of the record, the spousal support order was made without consideration of factors in R.C. 3105.18(C)(1), and marital property and debt were distributed without incorporation of parties' agreements and findings as to what was marital property versus separate property.

Trustee/Expenses/Compensation. Morris v. Mathers | 2024-Ohio-2774 | 5th Appellate District | 07/22/2024 In sister's action against brother-successor trustee alleging breach of fiduciary duty and seeking a declaration of rights with regard to parents' trust, trial court erred in rejecting brother's right to seek repayment of expenses for repairs and improvements to trust property where the trust specifically gave brother the power to make improvements on all properties held in trust, sister failed to show that improvements were unnecessary or were an unreasonable use of funds, and nothing in the trust language required brother to obtain written consent before exercising powers, R.C. 5808.14; as well, under R.C. 5807.08(A), brother was entitled to reasonable compensation for the financial and accounting responsibilities he completed during his time as trustee.

Property division/Marital debt. Palmieri v. Palmieri | 2024-Ohio-2720 | 10th Appellate District | 07/18/2024 In divorce action, trial court erred in its division of property and marital debt where there was no explanation why all credit card debt was found to be marital debt but was allocated entirely to husband, R.C. 3105.171(F), while husband stipulated that the property in wife's possession was hers and waived valuation, he did not stipulate that his personal property held in storage pods belonged to wife, and one retirement account contained separate property and should have been divided utilizing a coverture fraction.

Property division/Personal injury settlement. Nobles v. Nobles | 2024-Ohio-2750 | 5th Appellate District | 07/18/2024 In divorce action in which husband challenged the trial court's division of assets, asserting that the trial court erred in declining to find that the down payment and equity in the marital residence and an annuity and cash management fund were his separate property where the funds came from a personal injury settlement he received for severe injuries sustained during the marriage, the judgment is affirmed since the majority of proceeds from the personal injury settlement were used to benefit the marriage, husband failed to trace the funds to his property, and because husband suffered serious injury and his ability to work was impaired, the trial court awarded him the entire amount of the annuity, and wife was held responsible for the entire mortgage on the residence to make division of marital property equitable, R.C. 3105.171(C).

Financial misconduct/Stock liquidation. A.E. v. J.E. | 2024-Ohio-2644 | 8th Appellate District | 07/11/2024 In divorce action in which the court's prior judgment is vacated upon reconsideration, trial court erred in finding that husband committed financial misconduct for, inter alia, failing

to disclose liquidation of restricted stock units where, although husband was technically in violation of a mutual restraining order that prohibited him from liquidating and spending restricted stock units when he liquidated the stock units, the funds from liquidation were used to pay the parties' taxes, restraining orders left husband very little money to live on, and he neither profited from the payment of taxes nor intentionally defeated wife's interest in marital assets by dissipating the stock, R.C. 3105.171(E)(4).

Property division/Equity/Valuation/Rental income. Iranpour-Boroujeni v. Emami | 2024-Ohio-2546 | 1st Appellate District | 07/03/2024 In divorce action in which husband challenged the division of property, trial court erred in its determination of equity in the marital property where the court's identification of the mortgage balance on the property did not correspond to the valuation of equity on the de facto termination date; as well, income from rental property was used to pay the mortgage, but wife was awarded both half of the equity in the property and half of the rental income, which was used to fund the equity.

Judgment/Amendment/Appeal. Hall v. Hall | 2024-Ohio-2569 | 6th Appellate District | 07/03/2024 In divorce action in which the trial court's judgment awarded the entirety of a joint credit union account to wife as her separate property, and after amending the judgment to correct a clerical error two days later, ordered husband to pay spousal support to wife, husband's appeal of the division of marital property is dismissed as untimely where the amended judgment, Civ.R. 60(A), did not extend the time that husband had to timely file a notice of appeal because the issue on appeal was not affected by the correction of spousal support obligations, App.R. 4(A)(1).

Property division/Debts/Spousal support. Matheson v. Matheson | 2024-Ohio-2477 | 9th Appellate District | 06/28/2024 In divorce action in which the trial court, on remand, was instructed to calculate the specific amount of marital debt and to determine which marital debt would be paid with the equity from sale of the parties' marital home, the trial court's ruling that there was no marital debt is affirmed where husband's ongoing financial tactics of taking out compounding loans for more than the amount owed and accumulating additional debt in direct contravention of trial court's mutual restraining orders resulted in husband being solely responsible for the remaining outstanding loans; the trial court did err in denying wife's request for a retroactive adjustment of temporary spousal support after the marital residence was sold since, inter alia, she began to incur rent payments.

Property division/Marital residence. Moon v. Moon | 2024-Ohio-2428 | 10th Appellate District | 06/25/2024 In divorce action in which wife challenged the allocation of assets and liabilities, trial court erred in awarding marital residence to husband while allowing husband to keep the residence and not paying a full equalization amount until a future deadline, which amounted to wife financing husband's retention of property without requiring him to pay interest.

Child/Spousal support/Income calculation. Stratton-Phillips v. Phillips | 2024-Ohio-2399 | 3rd Appellate District | 06/24/2024 In divorce action in which husband challenged his obligation to pay child and spousal support, trial court erred in its calculation of husband's income where the court considered information beyond the scope of R.C. 3119.05(D) and did not calculate overtime and bonus income in the manner required by that statute for child support purposes, and the award of spousal support, R.C. 3105.18(C)(1), was based in part on the erroneous calculation of income and was therefore also error.

Magistrate's decision/Objections. Traven v. Traven | 2024-Ohio-2393 | 9th Appellate District | 06/24/2024 In divorce action in which husband asserts that he did not receive the magistrate's decision and retrieved it from the court before filing untimely objections along with a request for leave to plead, trial court erred in dismissing his objections without acknowledging that husband had requested an extension since the trial court should have informed husband whether it was allowing him to proceed with his objections, there is no reason for husband to presume the trial court was granting his motion via inaction, and if the trial court was not going to grant husband's request, there would be no reason for him to order a transcript or schedule a hearing.

Property division/Business valuation/Appraisal methods. Hoy v. Hoy | 2024-Ohio-2440 | 4th Appellate District | 06/18/2024 In divorce action in which the parties disagreed about the valuation of their transport business, trial court erred in reducing the value of the business based on a vehicle debt where wife's appraisal based on tangible assets of the business was appropriately rejected in favor of husband's appraisal based on capitalization of earnings, and husband's appraiser correctly reduced the value of the business by recognizing an outstanding loan balance, but the vehicle debt had been paid off and there was no evidence that any vehicle debt existed requiring further reduction in valuation.

Child support/Imputed income. Diallo v. Diallo | 2024-Ohio-2098 | 5th Appellate District | 05/30/2024 In divorce action in which husband challenged the imputation of minimum wage to wife in determination of child support, arguing that wife voluntarily left her employment in which she earned more than minimum wage, judgment is affirmed where wife quit her employment in order to travel frequently from her new country of residence to visit the parties' children, and husband provided no evidence showing what compensation wife could earn from periodic employment in a job similar to her former employment or if remote employment was possible for wife, R.C. 3119.01(C).

Civil protection order/Rebuttal evidence. Vargo v. Massa | 2024-Ohio-1973 | 5th Appellate District | 05/22/2024 In petitioner's action seeking a domestic violence civil protection order against respondent-former romantic partner for violence and threats, trial court erred in prohibiting petitioner from submitting evidence of respondent's alleged abuse on reasoning that petitioner was required to present any photographs or voice recordings during her case in chief; petitioner should have been allowed to submit the evidence as rebuttal to respondent's testimony, Evid.R. 613(B), and magistrate failed to acknowledge petitioner's statement regarding evidence during presentation of her case, R.C. 3113.31.

Evidence/Hearsay/Decedent's plan. Thompson v. Thompson | 2024-Ohio-2147 | 4th Appellate District | 05/22/2024 In divorce action, trial court did not err in admitting evidence of

husband's deceased mother's intentions for her son to inherit her house upon her death where an attorney who represented mother testified that, upon his advice, husband's mother transferred her house to wife only to protect it from husband's taxes until he could pay them off, mother's statement reflected a "plan" that after her death and after husband paid off his taxes, her home was to pass to husband, and courts have found that testimony about such inheritance plans is an exception to hearsay under Evid.R. 803(3).

Property division/Tracing/Post-nuptial agreement. Williamson v. Williamson | 2024-Ohio-1919 | 12th Appellate District | 05/20/2024 In divorce action, trial court did not err in finding that the parties' residence was marital property rather than wife's separate property where wife failed to trace her separate property to purchase of the residence, husband provided funds for the parties' expenses, but there was no evidence as to how wife used the contribution or what funds she used to pay the mortgage she owed on the home prior to marriage, and the current version of R.C. 3103.06 that eliminates the need for a post-nuptial agreement to be accompanied by a separation agreement did not apply retroactively to permit enforcement of wife's trust agreement, which wife asserted was a valid post-nuptial agreement.

Decree/Estate value/Support. McCloskey v. McCloskey | 2024-Ohio-1900 | 2nd Appellate District | 05/17/2024 In divorce action in which wife sought clarification of terms of decree regarding parties' requirement to provide for son with a disability, trial court erred by not resolving the ambiguity of terms in the decree where the question remains whether calculation of the value of deceased husband's estate was meant to be gross value or net value, and the estate's value must be properly calculated before wife's claim can be made against husband's estate for the amount required for care of son.

Parenting coordinator/Fees. Gifford v. Gifford | 2024-Ohio-1844 | 9th Appellate District | 05/13/2024 In divorce action in which husband challenged appointment of parenting coordinator, trial court erred in its award of parenting coordinator fees where husband requested a hearing on coordinator's motion for fees, but the hearing was not held, the judgment entry listed three different amounts awarded to coordinator without explanation for inconsistencies, the fee arrangement between the parties and coordinator was not a simple equal division of fees, and the coordinator submitted only invoices for services that husband was required to pay rather than details of all billing.

Divorce decree/Modification/Marital home. Casey v. Casey | 2024-Ohio-1808 | 2nd Appellate District | 05/10/2024 In divorce action in which husband challenged modification of the divorce decree, trial court erred in modifying the terms of the decree by permitting wife to retain the marital residence where modification of the final judgment was not allowed under the terms of the divorce decree without written consent pursuant to R.C. 3105.171(I) where the decree awarded the marital residence to husband with the requirement that he refinance the loan on the residence within 60 months, which he failed to do, but the language of the award of possession of home to wife "should she sell the property" seemed to give her the option to forego a sale and retain the home, which constituted an improper modification of the divorce decree.

Property division/Jewelry. Poulos v. Poulos | 2024-Ohio-1769 | 9th Appellate District | 05/08/2024 In divorce action in which husband challenged the division of property, trial court erred in ordering husband to compensate wife for the value of jewelry where jewelry was given to wife by husband and his mother prior to parties' marriage and included stones previously owned by husband's grandmother, and the trial court characterized the jewelry as gifts conditioned upon the parties staying married, but the questions remain whether the jewelry was marital or separate property and whether wife should receive a monetary award for replacement value, R.C. 3105.171.

Property division/Marital home. Edje v. Holmes | 2024-Ohio-1663 | 1st Appellate District | 05/01/2024 In divorce action in which husband challenged the division of property, judgment is affirmed where award of marital home to wife was equitable, even though husband contributed to the initial purchase, because husband did not honor the parties' agreement to split the mortgage payments and abandoned wife financially, wife paid contractors and maintenance workers for work performed on the home, and husband waived the argument of equitable estoppel by failing to raise the issue in closing argument or in objections to the magistrate's decision, R.C. 3105.171.

Separation agreement/Prior agreement/Waiver/Parol evidence. In re Hetmanski v. Hetmanski | 2024-Ohio-1646 | 11th Appellate District | 04/29/2024 In dissolution of marriage action, trial court erred in finding that husband was fraudulently induced into signing the parties' separation agreement where the parties entered into a side agreement relieving husband of responsibility to pay half of wife's student loans, signed prior to signing the separation agreement, which required husband to pay half of wife's student loans, but wife waived the right to require husband to make payment of loans because she never requested payment nor submitted a bill to husband; also, a party cannot prove fraudulent inducement simply by alleging that a statement or agreement made prior to the contract is different from that which now appears in the written contract, and attempts to prove such contradictory assertions is exactly what the parol evidence rule was designed to prohibit.

Financial misconduct/Disclosure/Restricted stock units. A.E. v. J.E. | 2024-Ohio-1585 | 8th Appellate District | 04/25/2024 In divorce action, trial court erred in finding that husband committed financial misconduct, R.C. 3105.171(E)(4), by failing to disclose restricted stock units (RSU's) where, inter alia, husband identified the RSU's in his counter affidavit to wife's motion for temporary support, they were listed on husband's exhibit which counsel received shortly before the first trial, and the last page of the exhibit shows the quantity of RSU's vesting each year as well as the dates on which they vested or were due to vest; as well, given the trial court's restraining orders leaving husband with little income to live on, it was not unreasonable for husband to conclude that he could use the RSU's to pay the parties' tax liabilities since the RSU's were counted as income in the temporary support order, so husband did not wrongfully dissipate the RSU's.

Spousal support/Remand/Prior evidence. Haun v. Haun | 2024-Ohio-1526 | 11th Appellate District | 04/22/2024 In divorce action in which wife sought modification of spousal support and related claims, where trial

court's initial judgment was reversed and the case was remanded, trial court erred on remand in denying wife's motion for spousal support on reasoning that wife did not present certain evidence where the parties had agreed to use evidence from prior litigation in the case, wife was not required to present new evidence on remand, and the factors under R.C. 3105.18(C) must be considered in assessing whether a prior spousal support award remained appropriate and reasonable.

Civil protection order. Kronk v. Getts | 2024-Ohio-1516 | 12th Appellate District | 04/22/2024 In petitioner's action seeking a civil stalking protection order against respondent, asserting harassment on social media with denigrating statements about petitioner and in person by driving by her house for extended periods of time, trial court did not err in issuing the order where petitioner testified that she felt threatened by respondent's harassment sufficient to prove that respondent had knowingly caused petitioner to believe respondent would cause her physical harm or mental distress, and although the court did not set forth findings in detail, the record supports issuance of a protection order, R.C. 2903.22, 2903.214(C)(1).

Property division/Marital debt. Leithauser v. Leithauser | 2024-Ohio-1497 | 2nd Appellate District | 04/19/2024 In divorce action in which the parties transferred to husband's parents the parties' former marital residence in exchange for parents' residence that was debt-free, and after husband's parents took out a mortgage on the former marital residence the parties continued to pay the mortgage, the trial court erred in classifying the mortgage as a nonmarital debt on reasoning that there were no promissory notes or other contracts in writing obligating either of the parties to make the mortgage payments for husband's parents and that any such obligation was not legally enforceable without a written agreement due to the parol evidence rule; the mortgage debt on the former marital residence was incurred during the marriage for the joint benefit of the parties and for a valid marital purpose, and husband's parents conferred a benefit on the parties by transferring to them the debt-free property, while the parties continued to pay the mortgage debt on the former marital residence.

Child support/Calculation/Spousal support. Quester v. Quester | 2024-Ohio-1456 | 9th Appellate District | 04/17/2024 In divorce action in which husband challenged the modification of his child support obligation, trial court erred in its calculation of child support since R.C. 3119.01 requires calculation of child support based on the gross income of both parties, and husband's spousal support obligation to wife was deducted from his income but not added to wife's gross income for calculation of child support.

Frozen embryos/Disposition/Dissent. E.B. v. R.N. | 2024-Ohio-1455 | 9th Appellate District | 04/17/2024 In divorce action dispute regarding the parties' agreement with clinic for disposition in the event of divorce of frozen embryos resulting from invitro fertilization, trial court, treating the issue as property division, erred in awarding half of the embryos to each party with the requirement that all the frozen embryos be donated to the clinic to provide to another couple since wife's request for all the embryos was more consistent with honoring the parties' wishes, while taking into account the fact that the frozen embryos were connected to both husband and wife, and an amended divorce decree should include husband's wishes regarding the role he desires to play in child's life if wife's pregnancy is successful; there is a dissenting opinion in this case.

Divorce date/Property division. Porter v. Porter | 2024-Ohio-1413 | 12th Appellate District | 04/15/2024 In divorce action, trial court did not err in designating the date of the final divorce hearing as the de facto date of marriage termination for property division purposes, R.C. 3105.171(A)(2)(a), even though the parties lived apart for a period prior to the hearing, where husband's move to another state was supposed to be a temporary relocation for work that was to last only a few months, and under these circumstances, particularly when considering that husband never offered the domestic relations court any other alternative date, the court did not abuse its discretion.

Property division/Financial misconduct. Hall v. Bricker | 2024-Ohio-1339 | 10th Appellate District | 04/09/2024 In divorce action in which husband challenged the division of property, trial court's valuation and distribution of retirement funds is reversed where the court's distributive award of wife's marital retirement assets to her was based on a finding of husband's financial misconduct, but husband's liquidation of his retirement accounts to support his business was not shown to be unlawful or fraudulent and did not rise to the level of financial misconduct under R.C. 3105.171(E)(4), funds were not liquidated in anticipation of divorce, and wife supported husband's investment in his business at the time.

Health Care

Contract/Breach/Physician supervision/Rescission. Indep. Phlebotomy & Health Servs., L.L.C. v. Croston | 2024-Ohio-2349 | 5th Appellate District | 06/18/2024 In plaintiff-medical consulting business' breach of contract action against defendants-mid-level medical providers for refusal to examine clients without physician supervision, summary judgment in favor of defendants is affirmed where requiring defendants to engage in healthcare services without a supervision agreement with a physician was a violation of R.C. 4730.19 and 4723.43 and would potentially expose defendants to disciplinary action and penalties, and rescission of the parties' contract was the appropriate remedy because it was executory in nature.

Insurance

Motor vehicle/Wrongful death. State Farm Mut. Auto. Ins. Co. v. Garcia | 2024-Ohio-2800 | 8th Appellate District | 07/25/2024 In insurer's action seeking a declaration that it had no duty to defend or indemnify insured-police officer as to claims asserted against him in underlying action for wrongful death resulting from a shooting, summary judgment in favor of insurer is affirmed where the motor vehicle insurance policy provided liability coverage for insured for accidents involving ownership and use of insured vehicle, but shooting death did not arise out of insured's ownership or use of vehicle, even though insured was sitting in the vehicle at the time of the shooting.

Professional liability/Contract/Breach/Res judicata. Novak, L.L.P. v. Professional Solutions Ins. Co. | 2024-Ohio-1978 | 8th Appellate District | 05/23/2024 In plaintiffs-attorneys and

firm's breach of contract action against defendant-legal insurance provider seeking payments for appearances in a previously litigated case and in a separate case, trial court erred in granting summary judgment in favor of defendant as to the claim for supplemental payments for appearance in the separate case where, even though the claims in the previously litigated case were barred by res judicata, the separate case had not been previously litigated and therefore claims were not barred by res judicata, even though claims in the separate case arose from the same policy.

Real property/Appraisal/ Undiscoverable damage/Mistake. One Church v. Brotherhood Mut. Ins. Co. | 2024-Ohio-1601 | 10th Appellate District | 04/25/2024 In real property insurance dispute, arising from wind damage to insured's building, in which insured requested coverage above the amount of the appraisal award, trial court erred in granting judgment on the pleadings to insurer on reasoning that there was no mistake involved in determining the award since, even though insured did not specifically use the term "mistake" in its pleadings, insured's complaint pleaded mistake with sufficient particularity to satisfy Civ.R. 9(B) where some of the damage to insured's building was unknown and undiscoverable at the time the initial appraisal was conducted, and the damage was not discovered until repairs authorized by the initial appraisal award were commenced.

Juvenile

Legal custody/Psychologist's report/ Cross-examination/Due process. In re R.G.M. | 2024-Ohio-2737 | Supreme Court of Ohio | 07/23/2024 After trial court awarded temporary legal custody of dependent children to maternal aunt, court of appeals erred in ruling that mother was deprived of her right to procedural due process when trial court admitted into evidence and relied on psychologist's report in making its decision without allowing mother to cross-examine psychologist since, under the statutes governing legal-custody proceedings for dependent children, the trial court was permitted to consider the psychologist's report, even if the report constituted hearsay and even though the psychologist did not attend the hearing, R.C. 2151.35(B)(2) and Juv.R. 34(B), because the temporary legal custody order did not divest mother of all legal rights regarding her children and did not permanently foreclose mother's right to regain custody; as well, mother was not prevented from questioning psychologist where the hearing was held a year after the psychologist wrote the report and mother could have deposed the psychologist or subpoenaed him to appear at the hearing.

Dependent children/Judgment entries. In re C.M. | 2024-Ohio-2713 | 8th Appellate District | 07/18/2024 Adjudication of children as dependent is reversed where the trial court's judgment entries do not contain specific findings regarding the existence of any danger to the children, any underlying family problems that caused the children to be dependent, or any conclusions of law, so the entries failed to satisfy the requirements of R.C. 2151.28(L), and the case is remanded for the trial court to issue judgment entries that contain findings of fact and conclusions of law in compliance with the requirements of R.C. 2151.28(L).

Bindover. State v. Macklin | 2024-Ohio-2687 | Supreme Court of Ohio | 07/17/2024 The Ohio Supreme Court reverses the judgment of the court of appeals on the authority of State v. Williams, 2024-Ohio-1433, and State v. Taylor, 2024-Ohio-1752, and remands cause to the court of appeals to analyze the appellee's first assignment of error in accordance with The Ohio Supreme Court's analysis in State v. Burns, 2022-Ohio-4606; three justices concur in judgment only in part and dissent in part.

Dependent child/Evidence/Appropriate caregiver. In re O.V. | 2024-Ohio-2620 | 9th Appellate District | 07/10/2024 Adjudication of child as dependent was error where agency did not present any evidence of mother's alleged mental health or substance abuse issues, it presented no admissible evidence as to what occurred during an incident at restaurant's drive-thru window when mother allegedly engaged in an argument and fight, and even if the finding of dependency was based on mother's actions, which placed herself at risk of arrest and would make her unavailable to care for child, mother identified an appropriate caregiver for child in her absence, R.C. 2151.04(C).

Delinquency/Motion to suppress/ Show up identification. In re J.C. | 2024-Ohio-2513 | 6th Appellate District | 06/28/2024 In an adjudication of a juvenile as delinquent of adult robbery by complicity, the juvenile court's denial of a motion to suppress a show up identification of the juvenile by the victim was not reversible error since, although there were procedural defects due to the magistrate's failure to provide a written decision on the juvenile's motion to suppress, the juvenile presented no arguments that he was prejudiced by the procedural mistakes, nor does the record support a finding of any prejudice and, moreover, the juvenile was afforded the opportunity to file objections to the denial of his motion to suppress, the juvenile court fully considered his objections and offered specific reasons, supported by the record, why the objections were not well taken.

Drug offenses/Search/Wellness check. In re J.G. | 2024-Ohio-2423 | 1st Appellate District | 06/26/2024 In a conviction of aggravated possession of drugs and possessing drug abuse instruments, resulting from officer's discovery of drugs in defendant's purse and house defendant was at during a wellness check requested by another person at the house, trial court did not err in denying a motion to suppress since defendant, through her attorney, waived her right to challenge the admissibility of the syringe discovered during a bathroom search, another syringe was in plain view in defendant's open purse, and prior to the discovery of that syringe, the officers had discovered, in plain view, methamphetamine and a syringe in the living room and another syringe in the bathroom trashcan.

Delinquency/Diversion. In re J.B. | 2024-Ohio-2407 | 11th Appellate District | 06/24/2024 In an adjudication of juvenile by plea as delinquent by admission to adult failure to comply with police order and adult theft, the juvenile court did not err in denying the juvenile's motions to stay and to dismiss, alleging the juvenile court had made no determination pursuant to Juv.R. 9(A) and (B), regarding whether formal court action could be avoided in this case since, although the juvenile court's policy precluded screening of the complaint prior to the commencement of "formal court action," the magistrate did not exclude diversion as a potential option in this case, and the record reflects that the juvenile court ultimately

exercised its discretion in implicitly declining to refer the case to diversion when it imposed dispositional orders.

Delinquency/Equal protection/App.R. 16(A)(7). In re P.V. | 2024-Ohio-2324 | 11th Appellate District | 06/17/2024 In an adjudication of juvenile as delinquent of three counts of adult rape and one count of adult gross sexual imposition, the juvenile's claim that the juvenile court procedures of allowing a magistrate to hold a hearing and issue findings of fact and conclusions of law that the trial court adopts and allowing juvenile charges to be brought by complaint without a preliminary hearing or a grand jury indictment as required in adult criminal court violate the juvenile's constitutional right to equal protection is without merit since the juvenile failed to cite any legal authorities in support of his claim, App.R. 16(A)(7); also discussed, sufficiency and weight of evidence.

Custody. In re G.S. | 2024-Ohio-2316 | 5th Appellate District | 06/17/2024 Award of permanent custody of child to agency is affirmed as in child's best interest where evidence shows, inter alia, that mother was terminated and asked to leave substance abuse program due to her inability to be redirected, her struggles with other residents, and her peer confrontations, and that after discharge she failed to get further treatment, missed drug screens, and was unable to maintain stable housing, R.C. 2151.414.

Delinquency/Prior bad acts. In re K.M. | 2024-Ohio-2278 | 1st Appellate District | 06/14/2024 In juvenile's adjudication as delinquent of two counts of adult gross sexual imposition, juvenile court did not err in admitting video recordings of social worker interviews with two child victims under the Evid.R. 803(4) hearsay exception for statements made for medical treatment or diagnosis where interviews took place at a medical center, the interviewers were not leading, and the victims understood the need to tell the truth, did not have a motive to lie, and were substantially consistent; although juvenile court erred in admitting evidence of a victim's prior assault by the juvenile under Evid.R. 404(B), the error was harmless where substantial other evidence supported the outcome of the trial beyond a reasonable doubt.

Custody/Weight of evidence. In re L.H. | 2024-Ohio-2271 | 8th Appellate District | 06/13/2024 Award of permanent custody of child to agency is reversed and remanded because termination of mother's parental rights was against the weight of evidence under R.C. 2151.414 where mother's deficiencies in meeting the case plan were beyond her control due to incarceration, she showed commitment to the child's welfare while incarcerated and when in halfway house by enrolling in parenting classes, remaining drug free, securing employment, and seeking additional visitations, and since termination of parental rights is a last resort, further proceedings are necessary.

Restitution. In re N.V. | 2024-Ohio-2197 | 6th Appellate District | 06/07/2024 Following an adjudication of delinquency for adult receiving stolen property and obstruction of official business, arising out of damage to a stolen electronic bike, the juvenile court did not err in ordering the juvenile to pay $954.88 of restitution (one-half of the cost to replace the damaged bike, the other half was voluntarily paid by co-defendant) where the victim presented unrefuted testimony and documentary evidence of the damage to the bike that could no longer be safely operated.

Custody/Indian Child Welfare Act. In re of A.G. | 2024-Ohio-2136 | 10th Appellate District | 06/04/2024 Award of permanent custody of child to agency was error where the court was required to ask each participant at the permanent custody hearing about the possible Native American heritage of the child under the Indian Child Welfare Act, 25 C.F.R. 23.107(a), and because the only such inquiry occurred at the temporary custody hearing, the case must be remanded for compliance with the regulation, or the custody determination may be invalidated under 25 U.S.C. 1914.

Judicial bypass/Consent/Abortion. In re Complaint of Doe | 2024-Ohio-2140 | 10th Appellate District | 06/04/2024 Dismissal of juvenile's complaint seeking a judicial bypass order authorizing her to consent to an abortion under R.C. 2151.85 is reversed since, inter alia, the trial court erred in ruling that it lacked jurisdiction to issue the order where it had subject matter jurisdiction under the statute that specifically identifies the juvenile court of the county in which the minor resides as the proper venue for filing the complaint seeking a judicial bypass order and grants that court the power to issue the order, and the court had personal jurisdiction over the juvenile when she submitted to the court's jurisdiction by filing the complaint; as well, juvenile met the statutory criteria, while the trial court imposed several requirements that were not prerequisites to granting the order.

Competency/Second evaluation. State v. S.B. | 2024-Ohio-2080 | 10th Appellate District | 05/30/2024 In an adjudication of juvenile as delinquent of adult murder, the juvenile court's denial of a second competency evaluation was error since the juvenile court's denial of the second evaluation at the county's expense conflicts with the plain language of R.C. 2152.57(E)(2), requiring the county to cover the costs of the additional evaluation.

Bindover/Firearm specifications. State v. Jackson | 2024-Ohio-2048 | 9th Appellate District | 05/29/2024 After a bindover of juvenile to general division for aggravated murder and felonious assault counts, the grand jury issued an indictment that, inter alia, included firearm specifications to those counts and the juvenile pled guilty to an amended count of murder with a firearm specification, the trial court did not err by denying the juvenile's motion to dismiss the firearm specifications after the juvenile court issued a nunc pro tunc judgment entry to include firearm specifications since the juvenile court never indicated that its probable cause ruling was limited to the aggravated murder and felonious assault charges, nor did it find that the specifications were not supported by probable cause.

Delinquency/Weapon offense. In re J.F. | 2024-Ohio-1950 | 1st Appellate District | 05/22/2024 In an adjudication of juvenile as delinquent of adult improper handling of a firearm in a motor vehicle, R.C. 2923.16(B), denial of motion to suppress was not error since the officer asking the defendant to roll down his tinted windows during a lawful traffic stop to look in the back seat to determine whether any other occupants were present was not unconstitutionally intrusive conduct since it was reasonable and minimally invasive conduct for officer safety and officers then observed a gun in plain view on the rear seat behind the driver's seat, and the weapon was within the defendant's reach, Mimms and Stanfield.

Delinquency/Mandatory transfer/ Lack of final appealable order. In re J.C. | 2024-Ohio-1883 | 8th Appellate District | 05/16/2024 In an appeal by the state of the juvenile court's denial of the state's motion for a mandatory transfer of the juvenile to the common pleas court general division, the court of appeals dismisses the appeal for lack of a final, appealable order since the juvenile court's order both fails to state whether the transfer motion was granted or denied and fails to adjudicate several of the acts charged, In re J.R., and the court of appeals states the fact that the juvenile court ordered an amenability investigation does not convince it to construe the order as a denial of the transfer motion in the absence of a formal ruling on the motion, In re S.C.M.

Child support/Imputed income/ Certified conflict. Ayers v. Ayers | 2024-Ohio-1833 | Supreme Court of Ohio | 05/15/2024 In responding to the certified question whether a trial court has to expressly find that a parent is voluntarily unemployed or underemployed as a condition precedent to imputing income for child support calculation purposes, the court answers in the affirmative; in the instant divorce action in which trial court ordered unemployed husband to pay child support, the trial court, affirmed by the court of appeals, erred in failing to address husband's employment situation before imposing child support based on a calculation that incorporated husband's imputed potential income, R.C. 3119.01(C)(17).

Bindover/Right to counsel. State v. Taylor | 2024-Ohio-1752 | Supreme Court of Ohio | 05/09/2024 In a conviction of juvenile following a bindover for felony murder by felonious assault, the juvenile court did not err in finding probable cause that the juvenile was complicit in the murder warranting a bindover to the trial court general division, and the felony murder charge is rooted in the acts supporting the complicity charge, Burns, nor was the juvenile's right to counsel violated by officer's interrogation of the juvenile since no criminal proceedings had commenced when he was interrogated and, even if the Sixth Amendment right to counsel had attached, the juvenile waived that right when he waived his Fifth Amendment right to counsel after being given Miranda warnings; cause is remanded to the court of appeals to consider assignments of error that were not considered in the first instance.

Delinquency/Sex offenses. In re J.N. | 2024-Ohio-1727 | 12th Appellate District | 05/06/2024 Adjudication of delinquency to three counts of adult felony rape, R.C. 2907.02(A)(1)(b), and one count of adult felony gross sexual imposition, R.C. 2907.05(A)(4), was supported by sufficient evidence based on the victims' testimony that met the statutory requirements and, based on the juvenile court's adjudicatory decision, it clearly found both victims' testimony credible and that the juvenile's testimony was not, even if the victims may have provided testimony that was somewhat inconsistent to that of their prior statements, and adjudications are not against the manifest weight of the evidence simply because the trier of facts believed the state's witnesses over the defense witnesses, Gregory.

Custody/Prohibition/Jurisdiction. Hignight v. Knepp | 2024-Ohio-1708 | 6th Appellate District | 05/03/2024 In underlying custody action filed by former romantic partner of relator who adopted the children in Ohio and then moved out of Ohio with the children before partner could petition for step-parent adoption, relator's petition for a writ of prohibition to prevent respondent judge from proceeding with the custody action, arguing that the judge lacks subject-matter jurisdiction because the children live with her in another state, is dismissed pursuant to respondent's motion for summary judgment where conflicting evidence regarding the children's residence on the day the complaint was filed shows that the judge arguably has jurisdiction under the Uniform Custody Act and does not patently and unambiguously lack jurisdiction, and relator has a legal remedy by way of appeal of the judge's jurisdictional determination when the custody case concludes.

Judicial release. In re A.C. | 2024-Ohio-1661 | 1st Appellate District | 05/01/2024 In an appeal by the state of the juvenile court's grant of judicial release following the juvenile's admission to charged offenses, the juvenile court had discretion to grant early judicial release because it was not a party to the plea agreement between the state and the juvenile, limiting the juvenile's ability to receive judicial release, and no evidence exists in the record that the juvenile court adopted this provision at the juvenile's disposition; also discussed, final appealable order as a prerequisite to leave under R.C. 2945.67(A); dissenting opinion.

Custody/Shared parenting/Contempt. In re C.L.W. | 2024-Ohio-1519 | 12th Appellate District | 04/22/2024 In case in which child's parents entered into a shared parenting plan and mother was twice found in contempt for interfering with father's parenting time, the trial court did not err in declining to sanction mother for its second contempt finding on reasoning that there were lengthy delays in the proceedings that gave mother ample opportunity to modify her conduct and that she availed herself of the opportunity by conducting herself with cooperation and flexibility, the parties together made strides in communicating and cooperating, and R.C. 2705.05(A) does not require a trial court to impose a penalty upon finding a party in contempt.

Bindover/Same acts. State v. Williams | 2024-Ohio-1433 | Supreme Court of Ohio | 04/18/2024 In a mandatory bindover of juvenile from the juvenile division to the general division of the common pleas court, the juvenile could be indicted for, and convicted of, tampering with evidence in the adult court even if a charge for the offense was never considered by the juvenile court in its bindover to the general division where the charge is rooted in the same acts that were the subject of the juvenile complaint, R.C. 2151.23(H) and Burns; the court of appeals' decision is reversed and cause is remanded to address any remaining assignments of error.

Bindover/Mandatory. In re C.J.H. | 2024-Ohio-1233 | 12th Appellate District | 04/01/2024 The juvenile court erred by not mandatorily binding over juvenile to the general division trial court for complicity in multiple counts of adult murder and aggravated murder of two persons, even if the evidence shows that the juvenile was not a principal offender but was merely complicit in committing the offense, R.C. 2152.12(A)(1)(a)(i), and the use of a firearm is not necessary for a mandatory bindover to apply to category one offenses, Agee.

Labor and Employment

Discrimination/Disability/ Accommodations. Snyder v. U.S. Bank Natl. Assn. | 2024-Ohio-2727 | 1st Appellate District | 07/19/2024 In employee's employment discrimination action against employer for denying his requests for reasonable accommodations for disability and

terminating his employment for requesting second medical leave, summary judgment in favor of employer was error where questions remain whether employee had cognizable physical and mental disabilities that substantially limited a major life activity, R.C. 4112.01(A), whether employee's requests for accommodations were reasonable, and whether employer provided them.

Arbitration award/Vacate/Motion/Service/Dissent. Ohio Patrolmen's Benevolent Assn. v. Cleveland | 2024-Ohio-2651 | Supreme Court of Ohio | 07/16/2024 In labor union's dispute with city resulting in arbitration award for city and denial of union's grievance, prompting the union to file in the trial court a complaint application to vacate the arbitration award where the trial court confirmed the arbitration award and the union appealed, the court of appeals' judgment in favor of the city on the basis of union's failure to file a motion to vacate the arbitration award is affirmed since R.C. 2711.05 and 2711.13, read together, provide that when a party applies to vacate an arbitration award in the court of common pleas, the application must be in the form of a motion; the court of appeals' judgment that the union erred in failing to serve the city's outside counsel is reversed since a party filing an application in the court of common pleas to vacate an arbitration award satisfies the service requirements of R.C. 2711.13 when it serves either the adverse party to the award or that party's counsel; there is a dissenting opinion in this case.

Contract/Noncompete/Breach/Hardship/Trade secrets. Total Quality Logistics, L.L.C. v. BBI Logistics, L.L.C. | 2024-Ohio-2597 | 12th Appellate District | 07/08/2024 In freight broker's action against former employee alleging breach of contract, misappropriation of trade secrets, and related tort claims for violation of noncompete agreement by working for competitor, trial court erred in dismissing the claims where evidence did not show that enforcement of the noncompete agreement would cause hardship on employee, the agreement did not act as a bar to employee's sole means of support or stifle his skills, the trade secrets claim was based on R.C. 1333.61 and was not entirely derivative of the breach of contract claim, and tort claims must be determined on their merits.

Retaliation/Federal claim/Administrative remedy/State claim. Blank v. Nationwide Mut. Ins. Co. | 2024-Ohio-2500 | 10th Appellate District | 06/28/2024 In employee's action against employer, alleging discrimination and retaliation for demoting and disciplining him following controversy over statements he made to coworker, summary judgment in favor of defendant was error as to the retaliation claim where federal court's prior decision dismissing employee's Title VII retaliation claim with prejudice did not serve to bar employee from pursuing retaliation claim in state court pursuant to R.C. 4112.02 because federal court's dismissal was based on employee's failure to exhaust administrative remedies rather than on the substance of the claim.

Wrongful termination/Retaliation. Sullivan v. Walsh Jesuit High School | 2024-Ohio-2437 | 9th Appellate District | 06/26/2024 In plaintiff-chief financial officer's wrongful termination and retaliation action against defendant-school for declining to renew his contract after he reported possible violations of school bylaws for acceptance of third-party payments into accounts of student athletes, trial court erred in granting defendant's motion to dismiss plaintiff's retaliation claim under Title IX since it was a claim separate from wrongful termination, and plaintiff set forth sufficient facts to survive defendant's Civ.R. 12(B)(6) motion to dismiss; plaintiff could not bring his claim for wrongful termination because he was a contractor rather than an employee.

Discrimination/Sexual harassment. Morgan v. Consun Food Industries, Inc. | 2024-Ohio-2300 | 9th Appellate District | 06/17/2024 In employee's R.C. Ch. 4112 gender discrimination and related claims action against former employer for failure to address harassment by co-worker, judgment for employee pursuant to jury verdict awarding compensatory and punitive damages as well as attorney fees is affirmed where employee presented sufficient evidence to show that she was treated differently from similarly situated non-protected employees, she established that she was subject to unwelcome sexual harassment that affected her employment, and evidence showed that employer knew about harassment but failed to take action against co-worker.

Termination/Discipline policy. Brunaugh v. Damschroder | 2024-Ohio-1905 | 5th Appellate District | 05/17/2024 In employee's action seeking unemployment benefits after he was terminated for making racist remark to coworker, trial court did not err in affirming the administrative decision denying benefits, even though employer skipped steps in its progressive discipline policy, where employer's policy allowed for combining or skipping steps based on different situations, and while employee's offense was his first, employer found it sufficiently pejorative to warrant skipping disciplinary steps and to terminate employment for just cause.

Termination/Grievance procedure/Arbitrator. Colerain Twp. v. AFSCME Ohio Council 8, AFL-CIO, Local 3553 | 2024-Ohio-1352 | 1st Appellate District | 04/10/2024 In employee's grievance against employer-city for terminating employment without a pre-disciplinary hearing, trial court erred in vacating arbitrator's award sustaining the grievance and ordering reinstatement of employee where reinstatement was necessary on reasoning that city failed to follow the grievance procedure, the collective bargaining agreement gave arbitrator the authority to provide a full and adequate remedy by returning employee to the position he was in at time of termination, and therefore the arbitrator did not exceed her powers pursuant to R.C. 2711.10(D).

Sick leave/Retirement/Outside employment. Mollett v. Lawrence Cty. Bd. of Dev. Disabilities | 2024-Ohio-1434 | 4th Appellate District | 04/08/2024 In employee's breach of contract action against state employer, alleging that employer failed to pay him accrued sick leave credit after he retired, trial court erred in dismissing the complaint on reasoning that employee did not request payment of his unused sick leave at the time of his retirement where the language of the employment contract did not set a condition precedent that required plaintiff to request payment of sick leave at the time of retirement; because employee was found by the court to have acted with bad faith related to outside employment, under the faithless servant doctrine, he is ineligible to collect sick leave compensation accrued during a period of faithlessness.

Procedure

Limitations/Saving statute/Dismissal. McCullough v. Bennett | 2024-Ohio-2783 | Supreme Court of Ohio | 07/24/2024 In plaintiff-driver's action against defendant-driver, arising from injuries sustained in a vehicle accident allegedly caused by defendant, where plaintiff attempted to file two complaints before the expiration of the statute of limitations, both complaints were dismissed without prejudice, and plaintiff filed a third complaint after expiration of the statute of limitations but within one year of the dismissal of the second lawsuit, successfully obtaining service, trial court's dismissal of the third complaint on reasoning that the statute of limitations had expired was properly reversed by the court of appeals since dismissal of plaintiff's second action prior to the expiration of the statute of limitations was a failure other than on the merits, and the saving statute, R.C. 2305.19(A), provides that when a complaint fails otherwise than upon the merits, the plaintiff may commence a new action within one year after the date of the failure, which the plaintiff did; as well, there is no unwritten one-use restriction to the saving statute, and the Civil Rules provide protections against plaintiffs' efforts to indefinitely extend a statute-of-limitations period.

Counsel withdrawal/Continuance. Ark Advanced Remediation, L.L.C. v. Watson | 2024-Ohio-2874 | 4th Appellate District | 07/24/2024 In plaintiff-remediation business' action against defendants-homeowners for failure to pay for work performed in home, trial court did not err in granting defendants' counsel's motion to withdraw and in denying defendants' motion for a continuance where counsel gave defendants reasonable warning that he intended to withdraw and that he could withdraw without material adverse effects to defendants, R.Prof. Cond. 1.16(b), defendants did not raise any objection to counsel's motion to withdraw, defendants were initially granted an indefinite continuation of trial date to find substitute counsel but failed to engage substitute counsel after five months, and additional continuances would have inconvenienced parties.

Judgment satisfaction/Pseudonyms. Roe v. Taylor | 2024-Ohio-2714 | 8th Appellate District | 07/18/2024 In plaintiffs-children and parents' action against defendant-technology expert alleging failure to disclose assets to satisfy prior judgment against defendant for altering children's photos to be used as defense exhibits in criminal cases, summary judgment in favor of plaintiffs is affirmed since, inter alia, defendant's challenge to plaintiffs' use of pseudonyms to identify themselves is without merit where, although they are no longer minors, they did not lose their status as victims and therefore did not lose the ability to use pseudonyms, and minors' anonymity had little, if any, effect on defendant's ability to defend against their claims.

Discovery/Attorney-client privilege/Agents. 12312 Mayfield Rd., L.L.C. v. High & Low Little Italy, L.L.C. | 2024-Ohio-2717 | 8th Appellate District | 07/18/2024 In landlord's breach of contract action against commercial tenant for terminating lease prior to the end of the term, trial court erred in granting tenant's motion to compel documents where the documents were communications between landlord, landlord's brokers, and attorney providing legal advice on sale or lease of property, and an evidentiary hearing or in camera review of disputed documents is required to determine if the attorney-client privilege is extended to third-party brokers acting as agents for the landlord in this specific case, R.C. 2317.02(A).

Jurisdiction/Service/Federal court. Shehee v. Kings Furniture | 2024-Ohio-2379 | 2nd Appellate District | 06/21/2024 In plaintiff's action against defendants-furniture store and finance company, alleging violation of implied warranty of merchantability regarding purchased furniture, trial court erred in granting defendants' Civ.R. 12(B)(5) motion to dismiss for lack of subject matter jurisdiction where, although plaintiff failed to perfect service at the time of filing, the case was removed to federal court and later remanded back to trial court, so plaintiff's service request on remand was made within the limitations period and should have constituted refiling of action, Civ.R. 3(A).

Contract breach/Summary judgment/Response. Wright-Patt Credit Union v. Nunley | 2024-Ohio-2340 | 10th Appellate District | 06/18/2024 In plaintiff-bank's action against defendant-vehicle purchaser for failure to make payments on retail installment contract, summary judgment in favor of plaintiff is affirmed where, although ruling on the summary judgment motion was made before defendant's time to respond had expired, Civ.R. 6(C)(1) and (D), defendant was not materially prejudiced because he failed to offer any defense other than general denial of allegations, and additional information developed after the appeal was filed did not affect plaintiff's right to recover under the contract.

Post-judgment interest/Date of calculation. Settlers Walk Home Owners' Assn v. Phoenix Settlers Walk | 2024-Ohio-2296 | 12th Appellate District | 06/17/2024 In plaintiff-homeowners' association's action against defendant seeking to collect unpaid assessments where earlier trial court's award of assessments to plaintiff was reversed for specific years and plaintiff was ordered to pay restitution, trial court erred in its calculation of post-judgment interest on plaintiff's restitution obligation where, although the restitution order excluded attorney fees, the amount of restitution was definite in amount, and the judgment entry satisfied the requirements of R.C. 1343.03, so post-judgment interest should have been calculated from the original restitution order date rather than from the date plaintiff's appeals were exhausted.

Enlargement of time/Prejudice/Dissent. Hopkins v. Greater Cleveland Regional Transit Auth. | 2024-Ohio-2265 | 8th Appellate District | 06/13/2024 In plaintiff's action against defendant-transit authority, trial court did not err in effectively denying defendant's motion for enlargement of time to file a motion for summary judgment where, although a docket entry indicated that defendant's motion for enlargement of time had been granted, there was no signed journalized order explicitly granting or denying the motion, and plaintiff would have been prejudiced if defendant's untimely affirmative defense had been considered because there was insufficient time for him to respond before trial date; there is a dissenting opinion in this case.

Default judgment/Damages/Relief from judgment. Schooler v. Combs | 2024-Ohio-2111 | 12th Appellate District | 06/03/2024 In plaintiff-owner of storage facility's action asserting that defendant was interfering with his easement and causing him to lose rents on his storage units, trial court's order granting plaintiff's Civ.R. 55 motion for default judgment and awarding

damages to plaintiff is affirmed where defendant did not appeal the judgment but later filed a Civ.R. 60(B) motion for relief from judgment that was denied on reasoning that defendant had received notice of the default judgment hearing and had even appeared and participated at that hearing, and defendant's subsequent motions challenging the award of damages were also denied on the basis of res judicata since the arguments should have been made in the initial motion for relief from judgment.

Dismissal/Complaint allegations. A.W. v. Kircher | 2024-Ohio-2115 | 12th Appellate District | 06/03/2024 In plaintiff's defamation and related claims action against defendants-attorneys, trial court erred in granting defendants' motion to dismiss where all plaintiff's allegations in her complaint were not construed as true, as required by Civ.R. 12(B)(6), and plaintiff's claims of special damages including mental anguish were incorrectly rejected merely because the court did not agree that defendants' behavior had proximately caused damages.

Jury trial demand/Default judgment/ Punitive damages. Helfrich v. Patrick | 2024-Ohio-2097 | 5th Appellate District | 05/31/2024 In plaintiff's municipal court action alleging trespass and property damage and asking for actual damages and punitive damages and requesting a jury trial where trial court issued a default judgment to plaintiff, awarding him actual damages but denying punitive damages, the court erred in denying plaintiff's Civ.R. 38 request for a jury trial since plaintiff demanded a jury trial in his complaint, again reasserted that demand at the start of the damages hearing, and never abandoned his demand.

Discovery/Protective order/Sanctions. Walcutt v. Greer | 2024-Ohio-2094 | 5th Appellate District | 05/30/2024 In dispute over financial transactions involving assets of trusts created by defendant where plaintiffs attached numerous documents to their complaint under an ex parte protective order, later amended to allow Attorney's-Eyes-Only designations, trial court did not err in finding plaintiff guilty of civil and criminal contempt for violating the protective order where plaintiff filed a complaint in a related case and the attached exhibits were available on the public docket for more than two weeks, but the sanction for criminal contempt was error since the award of attorney fees to defendant as a sanction for criminal contempt was remedial rather than punitive; as well there was no information regarding reasonableness of fees.

Jurisdictional-priority/Central legal issue. Master Nails, Inc. v. Master Nails Lana, L.L.C. | 2024-Ohio-1694 | 8th Appellate District | 05/02/2024 In plaintiff-business' conversion action seeking to prevent defendants from converting plaintiff's business into a new business and taking its customers, trial court erred in dismissing the complaint on the basis of jurisdictional priority, reasoning that plaintiff-business was an asset in an earlier-filed divorce action in domestic relations court, since the jurisdictional-priority rule did not apply because there was no central legal issue in common between the earlier-filed divorce action and the instant conversion tort case, and the jurisdiction of the domestic relations court is inadequate to afford full relief to plaintiff in the instant case.

Counterclaim/Supplemental/ Limitations. David Rentals, L.L.C. v. Virginia Woods, L.L.C. | 2024-Ohio-1446 | 1st Appellate District | 04/17/2024 In plaintiff-property management company's action against defendant-apartment complex owner for failure to pay fees required under the parties' contract where defendant filed a supplemental counterclaim for slander of title, asserting that plaintiff wrongfully filed a mechanic's lien against defendant's property, trial court erred in reasoning that defendant's supplemental counterclaim was filed outside the statute of limitations and in dismissing the counterclaim since defendant's original counterclaim was timely filed after the mechanic's lien was recorded, the supplemental pleading related back to the original pleading, Civ.R. 15(E), even though the original counterclaim was dismissed prior to filing of the supplemental claim, and therefore the supplemental claim was filed within the statute of limitations period.

Appeal/Final order/Frivolous/ Sanctions. Makuch v. Makuch | 2024-Ohio-1305 | Supreme Court of Ohio | 04/10/2024 In divorce action in which the court ordered the parties to appear at a hearing to address support and related issues, prompting husband's attorney to file an appeal, which was dismissed for lack of a final appealable order, R.C. 2505.02(B), from which attorney appealed to the instant court, and attorney was ordered to "show cause within 14 days why he should not be sanctioned under S.Ct. Prac.R. 4.03(A) for instituting a frivolous appeal," the court denies attorney's motions for clarification and for leave to file a supplemental brief and rules that attorney's appeal is frivolous under Civ.R. 75(F), which provides that when a divorce decree fails to resolve support and related issues, it is not a final order; attorney is not designated as a vexatious litigator since the court has already made that declaration, and attorney fees are not awarded to wife since she appeared pro se.

Default judgment/Out-of-state/ Collateral attack. Dailey v. Miller | 2024-Ohio-1340 | 11th Appellate District | 04/09/2024 In appeal of plaintiff-out-of-state resident's foreclosure judgment against defendants-homeowners seeking to collect damages owed from a default judgment issued in plaintiff's separate case against defendants in plaintiff's state, trial court did not err in denying defendants' motion to vacate plaintiff's default judgment where defendants appeared in the foreign court through counsel and explicitly raised jurisdictional arguments, and the doctrine of res judicata applied to preclude defendants from collaterally attacking foreign default judgment after court in that state previously rejected their arguments.

Judge disqualification/Standing/ Personal interest. In re Disqualification of Bruns | 2024-Ohio-1308 | Supreme Court of Ohio | 04/08/2024 In case in which mother of alleged delinquent child filed an affidavit of disqualification of judge, R.C. 2701.03, mother had standing to file the affidavit since a parent has special status in delinquency cases and is considered a "party to the proceeding" for the limited purpose of filing an affidavit of disqualification; the affidavit is denied where affiant's claim that the judge has a personal interest in the case, arguing that the judge would not release the child from detention and pressured mother to approve plea deal, is without merit since judge denies prejudging any issue in the case or in any way interfering with child's decision whether to accept a plea deal, and mother has also failed to prove the allegation that the judge is otherwise disqualified to preside over the underlying case.

Judge disqualification/Vexatious litigator/Impropriety. In re Disqualification of Ruehlman | 2024-Ohio-1306 | Supreme Court of Ohio | 04/08/2024 In case in which city and other plaintiffs sought to have instant affiant declared a vexatious litigator and also requested related injunctive relief where affiant was found to be a vexatious litigator and judge warned affiant against filing an action without the judge's permission, prompting affiant to file the affidavit of disqualification, R.C. 2701.03, the affidavit is granted to avoid the appearance of impropriety since there is evidence that the judge made repeated comments relating to finding affiant and jailing him for "direct contempt" if he violated the court's order, which would cause an objective observer to question the judge's impartiality.

Judge disqualification/Removal of mask/Standing. In re Disqualification of Scott | 2024-Ohio-1462 | Supreme Court of Ohio | 04/04/2024 Affidavit of disqualification, R.C. 2701.031, filed by defendant in two underlying cases to disqualify municipal court housing division judge is denied where affiant's assertion of prejudice is based on the judge's question during a virtual hearing whether affiant was by himself in a room and whether he wanted to remove his mask, to which he replied "Okay," so judge did not issue a directive, and judge's question did not constitute evidence of prejudice; also, affiant had standing to file the affidavit where he employed a DBA designation, and there was no legal distinction between affiant and his DBA.

Professional Responsibility

Suspension. Disciplinary Counsel v. Kaiser | 2024-Ohio-2788 | Supreme Court of Ohio | 07/25/2024 Attorney is suspended from the practice of law for one year, fully stayed on conditions.

Suspension. Cleveland Metro. Bar Assn. v. Brown | 2024-Ohio-2789 | Supreme Court of Ohio | 07/25/2024 Attorney is suspended from the practice of law for six months, fully stayed on condition.

Suspension/Reciprocal discipline. Disciplinary Counsel v. Risner | 2024-Ohio-2703 | Supreme Court of Ohio | 07/18/2024 Attorney is issued an interim remedial suspension from the practice of law in Ohio and will not be reinstated until attorney is reinstated to the practice of law in other state in which attorney had been suspended prior to the instant Ohio suspension and until attorney also complies with other conditions.

Suspension/Reciprocal discipline. Disciplinary Counsel v. Staggs | 2024-Ohio-2502 | Supreme Court of Ohio | 07/01/2024 Attorney is indefinitely suspended from the practice of law in Ohio and will not be reinstated until attorney is reinstated to the practice of law in other state in which attorney had been suspended prior to the instant Ohio suspension and until attorney also complies with other conditions.

Reinstatement. Disciplinary Counsel v. Blakeslee | 2024-Ohio-2315 | Supreme Court of Ohio | 06/20/2024 Attorney is reinstated to the practice of law.

Reinstatement. Disciplinary Counsel v. Blakeslee | 2024-Ohio-2315 | Supreme Court of Ohio | 06/18/2024 Attorney is reinstated to the practice of law.

Admission. In re Application of Daubenmire | 2024-Ohio-2230 | Supreme Court of Ohio | 06/12/2024 Applicant's pending application to register as a candidate for admission to the practice of law is approved, and he is permitted to sit for the bar examination; there is a dissent in this case.

Reinstatement. Disciplinary Counsel v. Scribner | 2024-Ohio-2086 | Supreme Court of Ohio | 05/31/2024 Attorney is reinstated to the practice of law and ordered to serve a one-year period of monitored probation.

Reinstatement. Disciplinary Counsel v. Coomes | 2024-Ohio-2088 | Supreme Court of Ohio | 05/31/2024 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. Gernert | 2024-Ohio-1946 | Supreme Court of Ohio | 05/23/2024 Attorney is suspended from the practice of law for two years, with the entire suspension stayed on conditions.

Resignation. In re Resignation of Kalis | 2024-Ohio-1812 | Supreme Court of Ohio | 05/13/2024 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Kohler | 2024-Ohio-1813 | Supreme Court of Ohio | 05/13/2024 Attorney resigned from the practice of law with disciplinary action pending.

Suspension/Dissent. Disciplinary Counsel v. VanBibber | 2024-Ohio-1702 | Supreme Court of Ohio | 05/07/2024 Attorney is suspended from the practice of law for two years, with the entire suspension stayed on conditions; there is a dissenting opinion in this case.

Suspension. Lorain Cty. Bar Assn. v. Robinson | 2024-Ohio-1657 | Supreme Court of Ohio | 05/02/2024 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension. In re Zamensky | 2024-Ohio-1597 | Supreme Court of Ohio | 04/26/2024 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Taylor | 2024-Ohio-1623 | Supreme Court of Ohio | 04/26/2024 Attorney is issued an interim remedial suspension from the practice of law, with reinstatement on conditions.

Suspension/Dissent. Disciplinary Counsel v. Perrico | 2024-Ohio-1540 | Supreme Court of Ohio | 04/25/2024 Attorney is suspended from the practice of law for two years, with one year stayed on conditions, and with reinstatement on conditions; there is a dissenting opinion in this case.

Reinstatement/Suspension. Disciplinary Counsel v. Alexander | 2024-Ohio-1438 | Supreme Court of Ohio | 04/17/2024 Attorney is reinstated to the practice of law, and it is further ordered that attorney is suspended from the practice of law for one year, with the entire suspension stayed on conditions.

Suspension. Disciplinary Counsel v. Daniell | 2024-Ohio-1422 | Supreme Court of Ohio | 04/16/2024 Attorney is issued an interim default suspension from the practice of law, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Fannin | 2024-Ohio-1380 | Supreme Court of Ohio | 04/12/2024 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Public and Public Finance

Public records/Copy fee/Existence/Damages. State ex rel. Mobley v. Bates | 2024-Ohio-2827 | Supreme Court of Ohio | 07/30/2024 Public records requester's petition for a writ of mandamus to compel prosecutor

to produce certified statements and cash books for certain years is denied where assistant prosecutor's affidavit stated that the office never received the records request, the prosecutor properly responded once made aware of the request by informing requester of the cost of paper copies, R.C. 149.43(B)(6), and requester failed to respond to prosecutor's letter; regarding request for cashbooks, requester did not prove by clear and convincing evidence that those records existed, and also requester has not proved by clear and convincing evidence that he transmitted his public-records request by certified mail, so requester is not entitled to statutory damages.

Public records/Discovery/Appeal/Dissent. State ex rel. Ctr. for Media & Democracy v. Yost | 2024-Ohio-2786 | Supreme Court of Ohio | 07/25/2024 In relator's public records request action seeking to compel respondent-attorney general to produce certain records where magistrate issued an order allowing relator to conduct broad discovery, and respondent's motion to set aside the order was denied, prompting respondent's instant appeal, relator's motion to dismiss the appeal is denied since respondent has made a colorable claim that the discovery order directs him to disclose information he deems to be protected and denies him a protective order, so the order meets the provisional-remedy requirement, R.C. 2505.02(B)(4), any order compelling the production of privileged or protected materials determines the action under R.C. 2505.02(B)(4)(a) because it would be impossible to later obtain a judgment denying the motion to compel disclosure if the party has already disclosed the materials, and respondent would not be afforded a meaningful or effective remedy by way of an appeal following final judgment; there is a dissenting opinion in this case.

Open Meetings Act/Executive session/Premature disclosure. Look Ahead Am. v. Stark Cty. Bd. of Elections | 2024-Ohio-2691 | Supreme Court of Ohio | 07/18/2024 In plaintiff's action seeking a determination that board of elections violated the Open Meetings Act during the four meetings at which the board entered executive session to discuss the purchase of voting equipment, trial court erred in dismissing the complaint on reasoning that board had entered into the executive sessions for purchase of property for a public purpose since R.C. 121.22(G)(2) also requires that executive-session discussions relate to matters for which the premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest; the case is remanded to the trial court to apply the interpretation of R.C. 121.22(G)(2) that the premature disclosure clause applies to all the permissible reasons listed under R.C. 121.22(G)(2) for entering executive session.

Public records/Criminal case/Affidavit/Judicial notice/Dissent. State ex rel. Curtis v. Turner | 2024-Ohio-2682 | Supreme Court of Ohio | 07/17/2024 Denial of relator-inmate-records requester's petition for a writ of mandamus to compel respondent-clerk of courts to provide records is affirmed where respondent asserted that he had provided relator with all the records in his possession that would satisfy relator's requests, supported by the affidavit of the clerk's assistant director, and relator did not provide evidence to call respondent's representations into question, Sup.R. 44, et seq.; as well, the court strikes relator's request for judicial notice of three documents under Evid.R. 201, including, inter alia, purported notes of a detective's investigation of relator's criminal case since the notes satisfy neither of the requirements for judicial notice under Evid.R. 201(B), and the notes contain new evidence not included in the court of appeals' record in this case; there is a dissenting opinion in this case.

Public records/Public office/Functional equivalent. State ex rel. Ware v. Pierce | 2024-Ohio-2663 | Supreme Court of Ohio | 07/16/2024 Public records requester's petition for a writ of mandamus to compel respondent to produce public records and to award statutory damages is denied where respondent is an employee of a private company that contracts with state prison to provide food service, and requester failed to provide evidence that the relationship between the private company and the state prison made the private company the functional equivalent of a public office, R.C. 149.011(A); the functional-equivalency test includes (1) whether the entity performs a governmental function, (2) the level of government funding, (3) the extent of government involvement or regulation, and (4) whether the entity was created by the government or to avoid the requirements of the Public Records Act.

Civil protection order/Public official/Online speech. Ehlers v. Thomas | 2024-Ohio-2531 | 12th Appellate District | 07/01/2024 In petitioner-coroner's office director's action seeking a civil stalking protection order against respondents for making threats in order to access public records regarding deaths that were allegedly part of a coverup, trial court erred in issuing the protection order where restrictions placed on respondents' online speech prohibiting specifically naming petitioner were not the least restrictive means by which to protect petitioner, petitioner was a public official and was not entitled to anonymity, and there was no evidence that respondents used or threatened the use of firearms against petitioner to warrant restriction.

Firearm uniformity law/Home rule/Dissent. Cincinnati v. State | 2024-Ohio-2425 | 1st Appellate District | 06/26/2024 In city's challenge to two amendments to R.C. 9.68, which gives citizens the right to carry a handgun and prohibits municipal ordinances from infringing on that right, trial court erred in issuing a preliminary injunction enjoining the state from enforcing the amended portions of the law on reasoning that the amendments did not constitute a general law since the amendments do not alter the Supreme Court of Ohio's conclusion that original R.C. 9.68 is a general law that preempts local firearm ordinances without running afoul of the Home Rule Amendment, City of Cleveland; there is a dissenting opinion asserting that the preliminary injunction order was not a final and appealable order.

Public records/Disputed facts/Master commissioner. State ex rel. Ware v. Booth | 2024-Ohio-2102 | Supreme Court of Ohio | 06/04/2024 In public records requester's petition for a writ of mandamus to compel public-information officer to provide records where officer responded by filing a motion for judgment on the pleadings, disputing requester's statement of the facts, officer's motion is denied and the case is referred to a master commissioner pursuant to S.Ct.Prac.R. 12.10 to conduct a full evidentiary hearing on the request for a writ of mandamus where requester states, inter alia, that he hand-delivered the records request to officer, and officer states that the requester never

hand-delivered a public records request to him.

Patient solicitation statutes/ Constitutionality/Class action. Allied Health & Chiropractic, L.L.C. v. State | 2024-Ohio-1976 | 8th Appellate District | 05/23/2024 In plaintiffs-chiropractors' class action lawsuit against defendant-state and related defendants, seeking an injunction and declaration that statutes prohibiting health care practitioners from soliciting patients using telephone numbers on police reports were unconstitutional for violating the one-subject rule and free speech/equal protection clauses, it was not error to deny defendants' Civ.R. 12(B)(1) motion to dismiss since the complaint raised claims that were justiciable; however, the court did err in granting plaintiffs' Civ.R. 23(B)(2) motion for class certification where plaintiffs did not seek monetary damages nor did they demonstrate damages related to contested portion of statute, and an individual judgment as to the constitutionality of a statute or ordinance would benefit the entire class, so certification of a class was not necessary.

Gun storage/Child endangerment/ City ordinance. West v. Cincinnati | 2024-Ohio-1951 | 1st Appellate District | 05/22/2024 Following child's gunshot injury after friend accessed plaintiff-gun owner's unsecured gun, resulting in charges being filed against plaintiff under a city ordinance prohibiting negligent storage of firearms in connection with child endangerment, in plaintiff's action seeking a declaration that city's ordinance was void, trial court did not err in issuing an injunction against enforcement of the ordinance where its regulation of storage of firearms when there was substantial risk to safety of children conflicted with R.C. 9.68(A); however, the injunction issued was overbroad in nullifying the entire ordinance and should be modified to exclude inapplicable sections.

Public records/Certified copy. State ex rel. Mobley v. LaRose | 2024-Ohio-1909 | Supreme Court of Ohio | 05/21/2024 Public records requester's petition for a writ of mandamus to compel respondent-public records coordinator to provide a certified copy of the bond for public employees, specifically for the director of state department, is denied as moot since respondent provided an uncertified copy to requester several days after the records request was made and notified requester that payment was required for a certified copy, which respondent did provide after requester made payment and filed the instant action, R.C. 149.43(B); regarding request for statutory damages, even if respondent did not provide requester with a certified copy within a reasonable time, statutory damages are not warranted because the failure to provide a certified copy within a reasonable time is not a failure to comply with an obligation under R.C. 149.43(B), and since the writ is denied as moot, requester is not entitled to court costs, R.C. 149.43(C)(3)(a)(i).

Public records/Overly broad request/ Waiver. Schaffer v. Ohio State Univ. | 2024-Ohio-2185 | Court of Claims | 05/08/2024 In public records requester's consolidated cases related to requests for information from state university athletic department, among special master's recommendations is that the university produce all employment contracts meeting certain criteria that were generated during a certain period, subject to redactions to protect third parties' statutory privacy rights, where university did not respond to the request before this case was filed but objected to it as overbroad for the first time during this enforcement litigation, and university waived this objection by not raising it before this case was filed; permitting a public official to oppose a request as overbroad for the first time in litigation would enable the official to avoid the duty to provide the requester with an opportunity to revise the request and possibly avoid litigation.

Public records/Attorney fees/ Reconsideration. Lerussi v. Calcutta Volunteer Fire Dept. | 2024-Ohio-1695 | Court of Claims | 04/30/2024 Public records requester's motion for reconsideration of denial of her requests for attorney fees is denied where requester's argument that her submission in support of the request for attorney fees followed the court's directions is without merit since, inter alia, motions for reconsideration generally are a nullity for purposes of civil practice and no manifest injustice to requester will result from denial of motion where, after requester presumably was advised of her legal counsel's fees, she ostensibly authorized her legal counsel to proceed with prosecuting the motion for contempt.

Open Meetings Act/Injunction/Court costs. State ex rel. Ames v. Freedom Twp. Bd. of Trustees | 2024-Ohio-1645 | 11th Appellate District | 04/29/2024 In relator's action alleging that respondent-township board of trustees violated the Open Meetings Act, trial court erred in declining to award relator all court costs where R.C. 121.22(I)(2)(a) provides that if the trial court issues an injunction pursuant to division (I)(1) of that section, as it did in the instant case, the trial court is then required to award the complaining party all court costs.

Courts/Technology fees. Gault v. Medina Cty. Court of Common Pleas Clerk | 2024-Ohio-1530 | 9th Appellate District | 04/22/2024 In plaintiff's class action against defendants-county officials for overcharging for unauthorized fees and costs in his separate divorce proceeding, like other individuals similarly situated, trial court erred in granting defendants' motion for judgment on the pleadings where the issue is whether R.C. 2303.201(B)(1) authorizes the clerk's office to charge an additional one dollar technology and computerization fee for each page when making the complete record and index or whether the correct charge is one dollar each time it "makes the complete record," and the plain language of R.C. 2303.201(B)(1) authorizes charging one dollar per each service rendered, not per page.

Quo warranto/Board member. State ex rel. Steen v. Bishop | 2024-Ohio-1489 | 10th Appellate District | 04/18/2024 Relator's petition for a writ of quo warranto seeking to remove respondent-teachers retirement board member, alleging that respondent was wrongfully appointed to replace relator as investment expert on the board, is granted since relator was appointed to the board and was legally entitled to his position where the length of term for the board position is unambiguously established under R.C. 3307.05(C), relator had the right to hold office for the defined term, and governor did not have inherent authority to remove and replace the appointed board member during the statutorily defined term.

Public records/Death records/Dissent. Ludlow v. Ohio Dept. of Health | 2024-Ohio-1399 | Supreme Court of Ohio | 04/17/2024 In public records requester's action asserting denial of access to public records of causes of death compiled by state department, court of appeals' judgment holding that

Public and Public Finance (Continued)

the records are exempt from disclosure under the Public Records Act, R.C. 3701.17, is affirmed on reasoning that records containing decedents' names and addresses, when combined with information regarding their causes of death, reveals the identity of the decedents and the decedents' past physical-health status, nothing in the statute limits its application to living individuals, and the fact that the cause of death can be disclosed to the public by the issuance of a certified copy of a death certificate, R.C. 3705.23, does not mean that the information is not otherwise prohibited from release for the purpose of R.C. 149.43, Walsh; there is a dissenting opinion in this case.

Public records/Confidential/Exempt. Smith v. Warcog | 2024-Ohio-1402 | 9th Appellate District | 04/15/2024 In relator's public records request petition for a writ of mandamus seeking to compel respondent-regional council of governments to release requested audio recordings of non-emergency calls and unredacted copies of documents related to incidents of alleged child abuse, the writ is denied since child abuse or neglect was at issue, the caller was required to immediately report abuse, R.C. 2151.421(A) and (B), the report was confidential, the caller had an expectation of privacy, R.C. 2151.421(I)(1), and R.C. 149.43(A)(1)(v) exempts disclosure of records the release of which is prohibited by state law.

Public records/Evidence. State ex rel. Feagin v. May | 2024-Ohio-1357 | 5th Appellate District | 04/10/2024 Public records requester's petition for a writ of mandamus to compel respondent-city human resources director to provide documents related to police disciplinary procedures is granted where respondent submitted no Civ.R. 56(C) evidence establishing production and service of the records, and even if respondent had provided an affidavit indicating that the documents were produced, copies of produced documents would be required as corroborating evidence, R.C. 149.43.

Public Utilities

Service termination/Tort claim/Jurisdiction/Prohibition. State ex rel. E. Ohio Gas Co. v. Corrigan | 2024-Ohio-1960 | Supreme Court of Ohio | 05/24/2024 In relator-energy company's petition for a writ of prohibition to prevent respondent-judge from exercising jurisdiction and to vacate the orders issued in decedent's executor's underlying wrongful death action related to relator's termination of gas service to decedent's residence, the writ is granted on reasoning that the public utilities commission has exclusive jurisdiction since termination-of-service disputes require the commission's expertise to resolve, R.C. 4933.12(C), and termination of service is a practice normally authorized by a utility, so relator has met both parts of the Allstate test, and respondent patently and unambiguously lacks jurisdiction over executor's action.

Real Property

Eviction/Mootness/Exception. Gulf Equity Invests., L.L.C. v. Clifton | 2024-Ohio-2829 | 2nd Appellate District | 07/26/2024 In plaintiff-property owner's forcible entry and detainer action against defendants-tenants seeking to take possession of property that plaintiff purchased at sheriff's tax foreclosure sale, defendants' appeal of order granting restitution is dismissed as moot where defendants had vacated the property and did not seek a stay of the order of restitution or post a supersedeas bond, the collateral-consequences exception to the mootness doctrine did not apply since the exception applies in cases in which the collateral consequence is imposed as a matter of law, and defendants have not identified any such collateral consequences.

Eviction/Rent/Repairs/Retaliation. Bader v. Tepe | 2024-Ohio-2573 | 1st Appellate District | 07/05/2024 In landlord's eviction action against tenants for damages resulting from removal of carpet and other unauthorized repairs, judgment in favor of tenants on counterclaim for retaliation, which could also have been raised as an affirmative defense, is affirmed since landlord breached the lease agreement by evicting tenants despite payment of rent and by failing to make repairs to residence, landlord retaliated against them, R.C. 5321.02(A), by evicting them soon after they made a complaint to the health department, and double damages were appropriate under R.C. 5321.16 where tenants met the requirement of providing a forwarding address.

Foreclosure/Evidence. RSS UBSC-M2018C9-OH IMG, L.L.C. v. 1360 E. Ninth CLE, L.L.C. | 2024-Ohio-2577 | 8th Appellate District | 07/03/2024 In plaintiff-lender's foreclosure action against defendants-subject property and guarantor for default on loan, summary judgment in favor of plaintiff is affirmed where defendants admitted to default and to plaintiff being the holder of the note and mortgage, plaintiff established the amount due, which was properly admitted under the business records exception to the hearsay rule, and no other evidentiary issues were of consequence because plaintiff met the requirements for summary judgment.

Foreclosure/Confirmation/Relief from judgment. Bank of New York Mellon Trust Co. v. Unknown Successor Trustee(s) of the Talmage | 2024-Ohio-2457 | 8th Appellate District | 06/27/2024 In bank's in rem foreclosure action against property in which bank filed a Civ.R. 60(B) motion for relief from judgment, seeking to amend the confirmation entry to request additional advances and interest, trial court erred in amending the foreclosure entry to prohibit distribution of advancements for which judgment had already been entered where the entry was a final judgment and there was no evidence that it was void, plaintiff sought modification only of the confirmation entry and not the foreclosure entry, and the court lacked authority to sua sponte modify the foreclosure entry to change the judgment awarded to bank.

Use restriction/Nunc pro tunc order/Dissent. Jay Realty v. J.P.S. Properties Diversified, Inc. | 2024-Ohio-2458 | 8th Appellate District | 06/27/2024 In plaintiff-property owner's action against defendant-former owner seeking a declaration that a use restriction was unenforceable and void and to allow the use proposed by plaintiff's interested buyer, summary judgment in favor of plaintiff was error since the proposed purchaser would sell the same type of items listed in the restriction, the use restriction did not self-terminate, and the use restriction was not extinguished by merger; as well, the trial court improperly used a nunc pro tunc order to change a judgment rather than to memorialize what the trial court actually did at an earlier point in time; there are two dissenting opinions in this case.

Foreclosure/Discovery. Trinity Fin. Servs. v. Unknown Heirs of King | 2024-Ohio-2377 | 2nd Appellate District | 06/21/2024 In plaintiff-financial service provider's foreclosure action against defendant-current property owner for default on note and mortgage, summary judgment in favor of plaintiff was error where defendant filed a discovery motion to compel plaintiff to produce the original note at issue and trial court implicitly denied the motion as moot on reasoning that defendant filed a memorandum in opposition to plaintiffs' motion for summary judgment; defendant repeatedly challenged plaintiff's status as holder of the note and as the party entitled to enforce the note, and plaintiff's refusal to produce the note for inspection hindered defendant's ability to support its claim.

Settlement agreement/Frivolous conduct/Attorney fees. Calypso Asset Mgt., L.L.C. v. 180 Indus., L.L.C. | 2024-Ohio-2339 | 10th Appellate District | 06/18/2024 In real estate buyers' action against defendant-seller for failure of leaseback agreement, resulting in a settlement agreement, trial court did not err in its calculation of attorney fees payable to defendant under the agreement where the court, on remand, conducted a hearing and reviewed all the materials including new supplemental evidence, it considered evidence regarding imposition of sanctions in light of its previous decision finding that frivolous conduct had occurred, and its decision was not unreasonable or arbitrary.

Easement/Trespass/Arbitration/Standing. R.L.R. Invests., L.L.C. v. Cross Street Partners, L.L.C. | 2024-Ohio-2292 | 2nd Appellate District | 06/14/2024 In commercial building owner's trespass action against developer seeking injunctive relief to prevent construction-related closing of walkway easement through arcade linking owner's building with owner's parking garage, trial court erred in granting developer's motion for a preliminary injunction to prevent owner from arbitrating against arcade owner where developer lacked standing to prevent arbitration because it was not party to building owner's and arcade owner's arbitration agreement, and denial of preliminary injunctive relief to building owner regarding trespass did not confer standing on developer because it was not a conclusive adjudication of rights.

Easement/Contract/Consideration. JLP-Orange, L.L.C. v. Tuller Square Northpointe, L.L.C. | 2024-Ohio-2236 | 5th Appellate District | 06/11/2024 In plaintiff-property owner's action alleging breach of contract, declaratory judgment and related claims against defendant-neighboring property, alleging that defendant did not provide plaintiff with a cross-easement for ingress and egress through defendant's property along a 30-foot-wide non-dedicated private roadway, judgment on the pleadings for defendant is affirmed where plaintiff's assertion that it was a third-party beneficiary of a contract between defendant and state transportation department is without merit; defendant's correspondence with department regarding the construction of the roadway was not an enforceable contract since there was no consideration, and conditions for opening the roadway to the public that only defendant could satisfy rendered the contract illusory.

Housing discrimination/Conflicting evidence. Pertsinides v. Canton Fair Hous. Comm. | 2024-Ohio-2057 | 5th Appellate District | 05/28/2024 In potential tenant's action against city housing commission, claiming that property manager violated city's fair housing code after tenant disclosed that she needed an emotional support dog and manager rejected tenant's documentation supporting her request as insufficient, resulting in administrative imposition of civil penalty for manager's unlawful discriminatory housing practices, affirmed by trial court, the judgment is affirmed since tenant established a prima facie case of discrimination and the trial court did not abuse its discretion in deferring to the commission's decision on the conflicting testimony about the sufficiency of tenant's documentation.

Life-leases/Security deposit. LaPorte v. Lutheran Hous. Servs. #9 | 2024-Ohio-2015 | 6th Appellate District | 05/24/2024 In plaintiffs-executrixes' action against defendant-landlord seeking attorney fees and return of life-lease purchase prices decedents-residents paid for housing units, summary judgment in favor of plaintiffs was error where the sole purpose of the life-lease purchase price was to secure each resident's right to live in a unit for the rest of their lives with no further payments, and the purchase prices did not secure performance of residents' obligations under the life-lease agreements and did not constitute security deposits subject to refund, pursuant to R.C. 5321.16.

Adverse possession. State Dept. of Natural Resources, Div. of Forestry v. Srofe | 2024-Ohio-1842 | 4th Appellate District | 05/07/2024 In plaintiff-division of forestry's action seeking to quiet title to property that borders defendant's property after defendant had been granted a default judgment in its earlier action for adverse possession of the bordering property, trial court did not err in finding that plaintiff was the owner of the property and in vacating defendant's default judgment in prior action where the deeds in evidence and boundary line agreement signed by the previous owner of defendant's property showed that the plaintiff owned the bordering property, and default judgment was void because defendant knew that his property bordered plaintiff's but failed to name plaintiff in the adverse possession action.

Taxation

Property/Tax value/Allocation. Stag Indus. Holdings, L.L.C. v. Cuyahoga Cty. Bd. of Revision | 2024-Ohio-2814 | 8th Appellate District | 07/25/2024 In property owner's appeal of board of revision's decision—subsequent to recent arm's-length sale of the property—regarding the allocation of the total property value between land and improvement, the board of tax appeals erred in affirming the determination of land value where there was no evidence to support the decision to increase the land value allocation from the value set by the fiscal officer, and the value set by the fiscal officer was neither contested nor refuted by the board of education, which was seeking the increase in value.

Torts

Wrongful death/Discovery/Privilege. Camacho v. Rose-Mary, Johanna Graselli Rehab., Inc. | 2024-Ohio-2802 | 8th Appellate District | 07/25/2024 In plaintiff's wrongful death action against defendant-children's group home in which evidence showed that defendant's staff left son with special needs unattended, with the result that he wandered outside and was struck by a car, trial court did not err in granting plaintiff's motion to compel discovery where, although some communications between physician and patient are protected pursuant to R.C. 2317.02(B)

and/or HIPAA, defendant failed to establish that any requested information was privileged, and discovery requests for emails between administrators related to incidents of abuse or neglect did not on their face seek the disclosure of nonparty patient's confidential medical records.

Medical malpractice/Limitations/Repose/Tolling. Adkins v. MedCentral Health Sys. Mansfield Hosp. | 2024-Ohio-2822 | 10th Appellate District | 07/25/2024 In plaintiff's medical malpractice action against medical defendants, arising from treatment of traumatic brain injury to plaintiff from motor vehicle accident, trial court erred in granting defendants' motion for summary judgment on reasoning that the complaint was filed outside the medical statute of limitations and repose, R.C. 2305.113, since the statutes were tolled, R.C. 2305.16, because plaintiff was of unsound mind; while a probate court's finding of incompetency may support a claim of unsound mind, such a finding does not conclusively establish that the incompetent individual was of unsound mind under the statute, but the evidence in this case, including certified medical records and appointment of a guardian, demonstrates that plaintiff was of unsound mind.

Defamation/Pleading/Pseudonyms. Doe v. Roe | 2024-Ohio-2716 | 8th Appellate District | 07/18/2024 In plaintiff's action alleging, inter alia, defamation by defendants for reporting false domestic violence claims involving plaintiff and her children, trial court did not err in vacating its previous order allowing the parties to proceed under pseudonyms and in granting defendants' motions for a more definite statement, requiring plaintiff to sufficiently identify parties by name where the names of all the parties must be included in the complaint under Civ.R. 10(A), and pseudonym status was not warranted where involvement of the children did not make information in complaint highly sensitive in nature, and other safeguards could be used to shield sensitive information.

Medical malpractice/Expert's report/Sham affidavit. Moore v. Mercy Med. Ctr. | 2024-Ohio-2610 | 5th Appellate District | 07/08/2024 In plaintiff-mother's medical malpractice action against defendant-physician, alleging breach of the standard of care during birth of child, trial court did not err in granting defendant's motion to strike plaintiff's expert's affidavit asserting that defendant failed to meet the standard of care and caused/contributed to injury to child, filed after expert's Civ. Rule 26(B) report, which did not assert that defendant failed to meet the standard of care, causing/contributing to injury to child, where the sham affidavit doctrine applied because plaintiff filed the affidavit contradicting his earlier expert's report for the purpose of defeating defendant's motion for summary judgment, and plaintiff failed to provide a reasonable explanation for his inconsistent opinion in the affidavit.

Negligence/Wrongful death/Monitoring resident. Withem v. Newark Leasing, L.L.C. | 2024-Ohio-2607 | 5th Appellate District | 07/08/2024 In plaintiff-estate's negligence and wrongful death action against defendant-nursing home, alleging failure to diagnose and prevent development of a serious condition which led to death of resident, summary judgment in favor of defendant was error where questions remain as to whether proper monitoring of resident would have detected the condition in time to prevent death and whether resident's abnormalities were not documented after being monitored by defendant because either resident displayed no signs of the condition or defendant failed to monitor the resident properly.

Negligence/Res ipsa loquitur . King v. Emergency Med. Transport | 2024-Ohio-2542 | 5th Appellate District | 07/02/2024 In plaintiffs' negligence action asserting that defendant's employees damaged her hearing by activating an air horn on their ambulance parked near plaintiff, resulting in a jury verdict in favor of defendant, trial court did not err in declining to give a res ipsa loquitur instruction to the jury where there were two equal and probable causes of plaintiff's injury, an air horn from defendant's ambulance or an air horn from another company's ambulance, and a res ipsa loquitur instruction is properly issued only when a defendant's negligence is the only reasonable inference from the facts.

Negligence/Dismissal/Expert testimony. Irani v. AMF Bowling Co. | 2024-Ohio-2504 | 10th Appellate District | 06/28/2024 In plaintiff's negligence action against defendant for injuries sustained when defendant fell off chair onto plaintiff's leg at bowling alley, trial court erred in sua sponte dismissing the complaint for failure to prosecute where, although plaintiff allegedly violated the Civil Rules and court orders regarding expert testimony after her witness was excluded due to her failure to timely disclose that her witness was an expert, her conduct did not amount to misconduct meriting the sanction of dismissal, Civ.R. 41(B)(1).

Legal malpractice/Expert witness/Jury instruction. Roth v. Fitch, Kendall, Cecil, Robinson & Barry Co., LPA | 2024-Ohio-2559 | 7th Appellate District | 06/28/2024 In estate's legal malpractice action against counsel for negligence in defending estate in underlying dispute with family farm over estate assets, summary judgment in favor of counsel was error where previous estate administrator directed counsel to retain an expert witness in underlying case, and there was conflicting evidence whether counsel breached the standard of care in failing to do so; as well, the court did not present a jury instruction on plaintiff's unjust enrichment counterclaim.

Immunity/Governmental function/School altercation. A.W. v. Twinsburg Bd. of Edn. | 2024-Ohio-2486 | 9th Appellate District | 06/28/2024 In plaintiffs-student and parent's negligence and related torts action against defendant-board of education for failure to exercise control of schoolmate to prevent injuries sustained in fight between students, trial court erred in denying defendant's Civ.R. 12(C) motion for judgment on the pleadings where defendant is a government agency and was entitled to political subdivision immunity, and an exception to immunity under R.C. 2744.02(B)(2) did not apply because defendant and employees were engaged in governmental functions, rather than proprietary functions, in maintaining order and security in the classroom and on school grounds.

Medical malpractice/Expert witness/Hearsay. Badawi v. Ohio State Univ. Wexner Med. Ctr. | 2024-Ohio-2503 | 10th Appellate District | 06/28/2024 In plaintiff-estate's medical negligence action against defendant-university hospital asserting that complications during childbirth led to child's death, judgment in favor of plaintiff is affirmed where testimony of department chairman to refute plaintiff's evidence in its case-in-chief was appropriately

excluded because none of plaintiff's experts speculated about how chairman would have responded if informed of the circumstances of patient's labor; as well, defendant's argument that the court erred in relying on a misinterpretation of department chairman's medical textbook chapter is without merit since the medical text was an exception to hearsay under Evid.R. 803(18) because it was a learned treatise, and it was presented in concert with expert testimony.

Replevin/Consent agreement/ Violation/Standing. Belcher v. Ernsberger | 2024-Ohio-2512 | 6th Appellate District | 06/28/2024 In plaintiff's replevin action seeking return of dogs loaned to defendant where the parties entered into a consent agreement providing that the parties would share custody of the dogs, with periodic exchanges that became confrontational, trial court erred in ordering forfeiture of the dogs to the county dog warden on reasoning that the parties violated the consent judgment since the chief of police and dog warden were not parties to the litigation and had no standing to enforce the consent judgment, and the court lacked authority to sua sponte reopen the case and find that the parties violated the terms of settlement agreement because no separate action for breach of contract or motion to enforce had been filed.

Negligence/Auto accident/Stipulation/ Rescission. Gardner v. Das | 2024-Ohio-2429 | 10th Appellate District | 06/25/2024 In pedestrian's negligence action against driver for injuries sustained when pedestrian was struck by vehicle, where driver's counsel sent a letter to pedestrian's counsel stipulating to liability and offering to settle the case, trial court did not err in granting driver's motion to rescind the stipulation as to liability where the stipulation had not been presented to the court for acceptance, the parties presented claims and arguments regarding the stipulation, and the court found that there was no stipulation, so the court did not impermissibly intervene on driver's behalf to make an unwarranted finding.

Wrongful death/Open and obvious/ Immunity. Steigerwald v. Berea | 2024-Ohio-2260 | 8th Appellate District | 06/13/2024 In plaintiff-estate's wrongful death action against city and related defendants after decedent was injured from tripping on the leg of a gym bench, claiming that city negligently placed benches with extended legs in a narrow locker room, summary judgment in favor of defendants is reversed where, inter alia, there were complaints by individuals who were injured or reported danger from the extended bench legs prior to decedent's injury, and the extended legs were not open or obvious and were obscured by the bench seating surface, other occupants, and their clothes and belongings; as well, defendants are not entitled to political subdivision immunity where a physical defect in the benches existed, R.C. 2744.02(B)(4), based on witness' sworn affidavits and deposition testimony that the benches posed a danger.

Wrongful death/Facility resident/ Agreement/Arbitration. Caston v. Woodlands of Shaker Hts. | 2024-Ohio-2267 | 8th Appellate District | 06/13/2024 In plaintiff-daughter's negligence and wrongful death action against assisted living community defendants for injuries mother sustained outside facility while under defendants' care, trial court erred in granting defendants' motion to enforce the arbitration provision in residence agreement where mother did not sign any documents upon admittance to facility and did not expressly consent to the arbitration agreement, plaintiff signed the residence agreement as the resident's "responsible party," but plaintiff did not possess sufficient authority to bind the mother to the agreement, and mother's acts did not lead defendants to believe in good faith that plaintiff had implied authority.

Wrongful death/Contribution/ Limitations. Westfield Ins. Co. v. Chapel Elec. Co., L.L.C. | 2024-Ohio-2736 | 2nd Appellate District | 06/12/2024 After insurer settled wrongful death and survival claim filed by decedent-employee's wife as the result of decedent's workplace electrocution death, in insurer's action for contribution against defendants-companies and employees, alleging that employees negligently left the equipment in a hazardous condition, failed to make proper repairs, and failed to provide adequate warnings, the trial court did not err in denying defendants' motion for summary judgment, which argued that the action was filed outside the R.C. 2307.26(B) statute of limitations, since the settlement payment was subject to signed releases and probate court approval, there were issues about structured settlements for minor beneficiaries and liens against proceeds that needed to be resolved and approved by the probate court, so insurer's contribution action was timely commenced, as it was filed within a year after the probate court approved the settlement and insurer paid the claim.

Medical negligence/Facility resident/ Agreement/Arbitration. Martin v. ManorCare Health Servs., L.L.C. | 2024-Ohio-2250 | 9th Appellate District | 06/12/2024 In plaintiff-husband's medical negligence action against healthcare defendants, alleging negligent care of deceased wife at nursing facility, trial court erred in granting defendants' motion to stay pending binding arbitration where the arbitration agreement was procedurally unconscionable because the nursing home held all the bargaining power and failed to explain arbitration to wife, the evidence in the record showed that wife suffered cognitive decline at the time of admission to the home, and the agreement was substantively unconscionable because it did not comply with R.C. 2711.23(C).

Negligent misrepresentation/Third party. Mickens v. Fisher Phillips Law Firm | 2024-Ohio-2216 | 11th Appellate District | 06/10/2024 In negligent misrepresentation and related claims action against defendant-law firm by plaintiff, who had filed a contract claim against defendant's client in a different case, where plaintiff alleged that the contract litigation between plaintiff and defendant's client was made public to defame plaintiff, trial court's order granting defendant's Civ.R. 12(B)(6) motion to dismiss is affirmed where plaintiff could not bring the instant action as a third party against defendant because his interests were not identical to those of defendant's client, and plaintiff did not allege that defendant provided false statements to him or that he relied on false statements or suffered pecuniary loss.

Wrongful death/Survivorship/Medical statute of repose. Pelletier v. Mercy Health Youngstown, L.L.C. | 2024-Ohio-2131 | 7th Appellate District | 06/04/2024 In plaintiff-administratrix's wrongful death and survivorship action against defendants-hospital and physicians, alleging that treatment led to decedent's death, trial court erred in dismissing the claims against the

physicians where the medical statute of repose is subject to a tolling provision, R.C. 2305.15(A), which extends the time limit of the R.C. 2305.113 repose period if the physicians spent time out of the state, and discovery should have been permitted for plaintiff to determine if the physicians had left the state during the repose period and whether they were out of state long enough to overcome the statutory time limit on the claims.

Wrongful death/Immunity/Exception/Pleading. R.G. v. Ginn | 2024-Ohio-2033 | 10th Appellate District | 05/28/2024 In plaintiff-mother's wrongful death action against defendants-county agency employees, claiming that they caused the death of child by placing her in the custody of grandfather and failing to remove her despite knowing that she was in danger, trial court did not err in denying defendants' Civ.R. 12(C) motion for judgment on the pleadings where plaintiff alleged that defendants acted wantonly and recklessly in placing and leaving child in danger, and plaintiff's claims put defendants on notice that the exception to governmental immunity under R.C. 2744.03(A)(6)(b) might apply.

Trespass/Continuing/Limitations. Bend-Fast, Inc. v. SBA Monarch Towers III, L.L.C. | 2024-Ohio-2036 | 11th Appellate District | 05/28/2024 In plaintiff-property owner's action against defendants-township and lessee of neighboring property, alleging trespass for installing access road and burying cables on property, trial court erred in granting defendants' Civ.R. 12(C) motion for judgment on the pleadings on reasoning that the claims were barred by the statute of limitations where plaintiff established that defendants' conduct constituted continuing trespass because control and conduct were ongoing, and the statute of limitations for permanent trespass was tolled under R.C. 2305.04.

Trespass/Tenants/Permission. Hashem v. Perk Co., Inc. | 2024-Ohio-1984 | 8th Appellate District | 05/23/2024 In plaintiffs-property owners' trespass action against defendant-cement company for dumping debris on property without authorization, summary judgment in favor of defendant is affirmed where plaintiffs' tenants gave defendant permission to dump construction debris on the property, plaintiffs ceded their possessory interests in the leased property to tenants, and even if plaintiffs maintained possessory interest in the property, they knowingly allowed defendant to unload debris on the property, thereby ratifying tenants' acts of granting permission.

Medical malpractice/Proximate cause/Dissent. Michalek v. Ohio State Univ. Wexner Med. Ctr. | 2024-Ohio-1889 | 10th Appellate District | 05/16/2024 In estate's medical malpractice action against university medical center, arising from death of pregnant patient whose autopsy report stated that the most likely cause of death was sudden cardiac arrest due to fatal arrhythmia in the setting of eclampsia, trial court's determination that medical negligence was not the proximate cause of patient's death is reversed since the estate demonstrated that patient's death was the natural and probable consequence of physician's failure to supervise patient's care where evidence shows that for several hours attending physician was unaware of patient's arrival, despite the fact that she was flown in before dawn via air medical transport, and the greater weight of the evidence demonstrated that patient died because of an eclamptic seizure that triggered arrhythmia and that timely treatment with appropriate medication can reduce the risk of seizure in women with preeclampsia; there is a dissenting opinion in this case.

Abuse of process. Kehoe v. Aronson | 2024-Ohio-1875 | 9th Appellate District | 05/15/2024 In plaintiff-attorney's abuse of process action against defendant-opposing counsel, arising from underlying case that involved housing corporation's ownership structure change, prompting some owners to object and to refuse to pay monthly fees, one of whom was defendant's daughter, where plaintiff asserted that defendant filed counterclaims and third-party claims in an attempt to obtain a reduction of fees allegedly owed by his clients, including his daughter, to the housing corporation, summary judgment in favor of defendant is affirmed where defendant's actions were not a perversion of the court process because the trial court had the power to order reductions of fees if warranted, and plaintiff failed to show that defendant used the proceedings to achieve an ulterior purpose for which lawsuit was not designed.

Negligence/Property damages/Damages. DCI Rentals, L.L.C. v. Sammons | 2024-Ohio-1962 | 4th Appellate District | 05/14/2024 In plaintiff-property rental company's negligence action against defendant-driver, claiming damages resulting from defendant's alleged negligence in driving vehicle into house on plaintiff's rental property, trial court's award of damages based on the fair market value of the property before and after the incident is affirmed as the correct measure for permanent damage, and plaintiff's claim for a greater amount of damages based on the cost to restore the property is meritless where the damage was not temporary and reparable and the restoration amount would exceed the difference in the market value.

Negligence/Arbitration/Jurisdiction. Jones v. Russell | 2024-Ohio-1857 | 11th Appellate District | 05/13/2024 In plaintiff's negligence action against defendants-online dating agency and date for injuries sustained during course of relationship, asserting that agency failed to provide appropriate background checks or install proper safety measures to protect its users, trial court erred in dismissing claims against agency for lack of jurisdiction, reasoning that plaintiff's claims were subject to mandatory arbitration, where, even if claims against agency were subject to mandatory arbitration, arbitration agreements may be waived, and such agreements do not affect the subject matter jurisdiction of the court, R.C. 2711.02, 2711.03.

Medical malpractice/Jury instruction/Absent-defendant/Interest. Jones v. Durrani | 2024-Ohio-1776 | 1st Appellate District | 05/10/2024 In plaintiffs-patients' medical malpractice action against defendants-physician and clinic, alleging breach of the standard of care, resulting in judgments for plaintiffs, where defendant-physician, who was represented by counsel, did not attend the trial, and the trial court instructed the jury that when a party has relevant evidence or testimony within his or her control, and the party fails to produce that relevant evidence or testimony, that failure gives rise to an inference that the evidence or testimony is unfavorable to that party, the "give rise" language was erroneous, but the jury instructions as a whole made it clear that an inference is permissive and not required to be made; as well, the trial court erred

in granting pre-judgment interest to plaintiffs where, although the court held a hearing on pre-judgment interest, no evidence was taken at the hearing or submitted with motions for pre-judgment interest, and therefore there was no evidence to support the factual findings pursuant to R.C. 1343.03(C).

Legal malpractice/Discovery/Privilege. Rehm v. Eckinger | 2024-Ohio-1860 | 5th Appellate District | 05/10/2024 In executor's legal malpractice action arising from alleged failure of defendants-attorney and firm to discover the existence of decedent's Transfer on Death Designation Affidavit (TODDA) when defendants prepared decedent's estate plan and will where defendants filed a motion to release attorney-client file relating to other attorney's representation in drafting the TODDA, arguing that the information in the file would reflect decedent's true intent and that the self-protection exception to the attorney-client privilege applied, the trial court erred in granting the motion since the self-protection exception is limited to the discovery of communications between the defending attorney and the defending attorney's former client, not communications between the former client and the former client's previous or successor attorney.

Immunity/Exception. Murtha v. Rossford Exempted Village Schools | 2024-Ohio-1798 | 6th Appellate District | 05/10/2024 In former principal's action against school superintendent alleging, inter alia, defamation for termination of employment following student's allegations of inappropriate conduct, trial court erred in denying superintendent's motion for summary judgment where principal failed to show that superintendent acted in bad faith as an exception to superintendent's political subdivision employee immunity under R.C. 2744.03(A)(6)(b), and the question remains whether the R.C. 2744.03(A)(6)(c) exception to immunity applies to principal's claims, so the case is remanded for the trial court to consider that issue.

Medical malpractice/Immunity/Exception. Berner v. New Leaf Residential Servs., Inc. | 2024-Ohio-1788 | 8th Appellate District | 05/09/2024 In plaintiff-mother's medical negligence and related claims action against defendants-care center and county board, alleging failure to provide the necessary level of care for her disabled son, which led to injuries when he jumped from window, trial court did not err in denying board's motion to dismiss, even though the board had political subdivision immunity for a governmental function, R.C. 2744.01(C)(2), where the question remains whether unprotected windows in a facility constituted negligence and a physical defect in a building used for a governmental function, as an exception to immunity under R.C. 2744.02(B)(4).

Negligence/Proximate cause. Parnell v. Zielinski | 2024-Ohio-1789 | 8th Appellate District | 05/09/2024 In plaintiff's negligence action against defendant-driver for injuries sustained in vehicle accident, judgment in favor of defendant is affirmed where, although the parties stipulated that defendant's negligence caused the accident, the accident was not the proximate cause of plaintiff's injuries because evidence showed that he had pre-existing injuries and degenerative changes which would have required medical treatment regardless of whether he was involved in the accident with defendant.

Fraudulent inducement/Res judicata. Song v. Rom | 2024-Ohio-1787 | 8th Appellate District | 05/09/2024 In plaintiff-property purchaser's action against defendants associated with the sale and management of properties alleging, inter alia, fraudulent inducement for making a return on investment that was significantly less than advertised, trial court did not err in dismissing the claims for lack of jurisdiction under the doctrine of res judicata where plaintiff previously filed an amended complaint in federal court, and the state trial court found that the federal judge's denial of leave to file an amended complaint reached the merits of the claims, the current claims could have been litigated in the first action, and defendants not included in the first action should have been included and were in privity with parties in the first action and were therefore entitled to benefit of res judicata.

Negligence/Swimming/Assumption of risk. Baldwin v. Church of God of Trenton | 2024-Ohio-1726 | 12th Appellate District | 05/06/2024 In plaintiff-mother's negligence action against defendants-church and related daycare, alleging failure to supervise child in swimming pool which led to injuries, summary judgment in favor of defendants is affirmed where the primary-assumption-of-risk doctrine applied because child's participation in the recreational activity was voluntary, staff members' behavior in exiting pool and supervising children was not reckless and did not increase the risk of drowning, and defendants were not required to decrease child's inherent risk of drowning because he was a non-swimmer.

Defamation/Standing. Valentine v. Stephen | 2024-Ohio-1631 | 7th Appellate District | 04/26/2024 In plaintiff's defamation action against defendant for publishing a negative review of purchase from online store, plaintiff's appeal of dismissal of complaint is dismissed where plaintiff's business was found to be the real party in interest, and plaintiff did not have standing to advance arguments on behalf of the business, pursuant to R.C. 1925.17.

Trespass/Discovery/Privilege. Schafer v. Levey | 2024-Ohio-1605 | 1st Appellate District | 04/26/2024 In plaintiff's action against defendant-neighbor for trespass on property during landscaping, trial court erred in granting defendant's motion to compel disclosure of communications between plaintiff and former counsel regarding counterclaims where the record was insufficient to allow review of whether the communications were privileged, and an evidentiary hearing or in-camera inspection should have been conducted to determine if the attorney-client privilege applied to the specific materials sought.

Medical malpractice/Expert witness. Horseman v. Mercy Health-Lorain Hosp. | 2024-Ohio-1518 | 9th Appellate District | 04/22/2024 In plaintiff-estate administrator's medical malpractice action against defendants-hospital and physician, claiming breach of the standard of care, leading to decedent's death, judgment in favor of plaintiff was error where defendants were precluded from cross-examining plaintiff's expert physician concerning his alleged substance abuse issues and license probation, Evid.R. 608(B), and the court provided no analysis as to whether the danger of unfair prejudice substantially outweighed the probative value of evidence, under Evid.R. 403(A).

Negligence/Expert. Meranda Nixon Estate Wine, L.L.C. v. Cherry Fork Farm Supply Co. | 2024-Ohio-1523 | 12th Appellate District | 04/22/2024 In negligence and related claims action by plaintiffs-vineyard owners against

company and its employee who applied herbicide to a field, asserting damage from herbicide drift, resulting in summary judgment for defendants, trial court erred in disregarding plaintiffs' expert's report and deposition testimony in its entirety on reasoning that expert formed her opinion solely upon state agriculture department's flawed hearsay report since, inter alia, the expert inspected the grapevines herself, took samples of the vines, examined weather data, and considered herbicide applications that took place near plaintiffs' property, and expert discussed her specialized knowledge, experience, education, and training as it related to herbicidal weed control and the effects various herbicides have on different types of crops and trees, Evid.R. 702.

Negligence/Immunity/Res ipsa loquitur. Ohio Bell Tel. Co. v. Cleveland | 2024-Ohio-1475 | 8th Appellate District | 04/18/2024 In telephone company's negligence action against city seeking to recover losses resulting from cable damage during city water department's repair of underground water line, trial court did not err in denying defendant's sovereign immunity-based motion for summary judgment where city was engaged in a proprietary function, R.C. 2744.02(A)(1), the doctrine of res ipsa loquitur applied because there was no evidence that a third-party tampered with company's cable after city excavated the site, and it was clear that the cable had been cut.

Negligence/Assisted living/ Classification of facility. Manter v. CPF Senior Living – Northgate Park, L.L.C. | 2024-Ohio-1385 | 1st Appellate District | 04/12/2024 In plaintiff-resident's negligence action against defendant-assisted living facility, alleging failure to provide care, leading to loss of a limb, trial court erred in granting defendant's motion for summary judgment on plaintiff's claim under R.C. 3721.13 and 3721.14 since defendant's license states that it is a residential care facility and that the license is issued in accordance with R.C. Ch. 3721 and Ohio Adm. Code 3701-17, so it qualified as a nursing home under the statute with a source of duty different from a residential facility licensed under R.C. 5119.34 and 5123.19.

Invalid license plate/Hearsay/Plain error. State v. Justice | 2024-Ohio-2574 | 1st Appellate District | 07/05/2024 In a bench conviction of, inter alia, operating a motor vehicle with an invalid license plate, the court of appeals reverses for plain error based on the trial court's admission of the officer's hearsay testimony of the results of his computer inquiry that he stated supported his arrest of the defendant and was the sole evidence supporting the conviction; conviction of driving without a driver's license is affirmed since the defendant raises no assignment of error as to that charge.

Impaired driving/Suppression/ Reasonable suspicion. State v. Tyler | 2024-Ohio-2589 | 5th Appellate District | 07/05/2024 In a conviction by plea of no contest to driving while under the influence of alcohol or drugs, R.C. 4511.19, the trial court erred in denying a motion to suppress since the officer did not have a reasonable suspicion, based upon specific and articulable facts, that an occupant is or has been engaged in criminal activity because the officer realized his mistake of fact prior to approaching the vehicle to perform an investigatory stop that the vehicle he stopped was not the one that had been reported to him as involved in a fight among juveniles.

Aggravated vehicular homicide/ Vehicular assault/Restitution. State v. Whitaker | 2024-Ohio-2495 | 6th Appellate District | 06/28/2024 Conviction by plea of no contest to aggravated vehicular homicide, R.C. 2903.06(A)(1)(a), and vehicular assault, R.C. 2903.08(A)(2)(b) and (C), was not error since the state was not required to separately charge the defendant for a violation of R.C. 4511.19(A) because aggravated vehicular homicide required only proof of the violation, not a separate conviction for violation of R.C. 4511.19(A), and the defendant's blood and urine tests proved he violated R.C. 4511.19(A)(1)(a) and (f) and 4511.19 (A)(1)(j)(vii); however, the trial court erred by awarding restitution to the victim's family based on possible reimbursement by the victim's estate to the victim's insurance company for payment the insurer made for medical bills.

Impaired driving/Underage impairment. State v. Lopez | 2024-Ohio-2394 | 7th Appellate District | 06/21/2024 In a conviction by plea to underage OVI, R.C. 4511.19(B)(1), the trial court did not err in denying motion to suppress where the trooper had reasonable suspicion to conduct field sobriety tests because an arresting officer may rely on more subtle evidence of drinking and evidence of only slight impairment of performance when the driver is under the age of 21, and the trooper had probable cause to arrest the defendant for OVI based on observations of the defendant and the results of field sobriety tests indicating alcohol impairment and, since the prohibited amount of blood alcohol in an underage driver is so minimal, an arresting officer may look for more subtle evidence of drinking and evidence of only very slight impairment of performance in the field sobriety tests.

Impaired driving/Administrative driver's license suspension. State v. Baca | 2024-Ohio-2304 | 12th Appellate District | 06/17/2024 Following imposition of the defendant's two-year administrative driver's license suspension for refusal to submit to officer's request that he submit to a chemical test to determine the concentration of alcohol, R.C. 4511.191(B)(1)(b), the trial court dismissed the OVI complaint and the defendant filed an appeal of his suspension, the trial court erred by denying a motion for limited driving privileges for lack of jurisdiction to rule on the motion since the defendant's motion seeking limited driving privileges was not an attempt to again appeal in the administrative license suspension, but a request the trial court allow him limited driving privileges during the two-year administrative license suspension and was not subject to the jurisdictional limitations set forth under R.C. 4511.197(A) and should have been reviewed pursuant to R.C. 4510.021(B); reversed and remanded for further proceedings.

Impaired driving/Vehicle. State v. Miller | 2024-Ohio-2217 | 11th Appellate District | 06/10/2024 In a conviction by plea of no contest to OVI, R.C. 4511.19(A)(1)(a) and (b), involving the defendant driving a horse-driven buggy while impaired by alcohol, the trial court did not err by denying a motion to suppress since a horse-driven buggy is a "vehicle" pursuant to the definition of vehicle in

R.C. 4511.01(A), since it is a "device" that is "drawn upon a highway" because a principal purpose or a significant purpose of a horse-driven buggy is transportation on the highways of this state, R.C. 4511.01(A), Giordano.

Impaired driving/Costs. State v. Quinn | 2024-Ohio-2194 | 2nd Appellate District | 06/07/2024 Following the defendant's plea to having physical control of a vehicle while under the influence, R.C. 4511.194(B)(1), the trial court's order that the state release the defendant's vehicle and license plates seized during a traffic stop was not error since dismissal of the original charges mooted the state's argument as to release of the vehicle and plates but, since the defendant pled guilty to first-degree misdemeanor having physical control of a vehicle while under the influence, R.C. 4511.194(B)(1), the trial court's order that the state pay the costs of the towing, storage and return of the defendant's vehicle was error because the state properly seized and retained the defendant's vehicle and license plates pursuant to R.C. 4511.195(B)(1)(a) and in light of the defendant's admission to a prior OVI conviction.

Driving under suspension/Qualifying suspension. State v. Glaspy | 2024-Ohio-2024 | 9th Appellate District | 05/28/2024 Following a conviction of R.C. 4510.11, driving under suspension, and R.C. 4511.21(A), failing to maintain an assured clear distance ahead, the court of appeals holds that the defendant could not be convicted of violating R.C. 4510.11(A) where the record supported that the prior suspension was a violation of R.C. 4509.101 and, since R.C. 4509.101 is within Chapter 4509, the defendant's suspension fell within the exception contained in R.C. 4510.11(A) and was not a qualifying suspension, and the state has not provided any other evidence that would support the conviction under R.C. 4510.11(A); remanded for the trial court to enter a finding of not guilty as to the R.C. 4510.11(A) charge.

Impaired driving/HGN test. State v. Sanyasi | 2024-Ohio-2042 | 5th Appellate District | 05/28/2024 In a conviction of OVI Impaired, R.C. 4511.19(A)(1)(a), and OVI Refusal, R.C. 4511.19(A)(2), a marked lanes violation with a distracted driving enhancement, the trial court's admission of the trooper's testimony concerning statistical probabilities of the results of the HGN test to potential blood alcohol results was not plain error in view of the admission of other evidence of impairment, including the trooper's testimony concerning the defendant's glassy bloodshot eyes, the odor of alcohol, slurring speech, a flushed face, body tremors and failure of the field sobriety tests, Allen; also discussed, OVI refusal to take a breath test.

Impaired driving/Physical control. State v. Miller | 2024-Ohio-2009 | 2nd Appellate District | 05/24/2024 Conviction of OVI and physical control offenses was error in part where the state failed to prove the defendant had prior OVI convictions since it introduced only an uncertified printout of the defendant's LEADS report as evidence of his prior OVI convictions that does not satisfy the requirements of R.C. 2945.75; the state did provide sufficient circumstantial evidence that the defendant was in physical control of the vehicle and operating the vehicle, R.C. 4511.194(B)(1), where the deputy sheriff observed the defendant alone in the vehicle, behind the steering wheel, and there was no one else at the scene.

Aggravated vehicular homicide/ Impaired driving/Expert testimony. State v. Naylor | 2024-Ohio-1648 | 11th Appellate District | 04/29/2024 In convictions for, inter alia, aggravated vehicular homicide and operating a vehicle while under the influence of a listed metabolite of a controlled substance, the trial court did not err in excluding the testimony of the defendant's proposed expert because, since the defendant was charged with violating R.C. 4511.19(A)(1)(j)(viii)(II), a per se offense, the state only had to prove he drove with the proscribed amount of marijuana metabolite in his system, and the state's obligation to prove proximate cause did not require it to prove the defendant was actually impaired, and the expert's proposed testimony challenged the reliability of the state's testing method, not the defendant's specific test results, which is precluded.

Impaired driving/Motion to suppress. State v. Pierce | 2024-Ohio-1560 | 5th Appellate District | 04/23/2024 In a conviction by plea to OVI and child endangering, the trial court did not err in denying a motion to suppress since there is no dispute that the admittedly intoxicated passenger, not the driver of the vehicle, pulled over for a marked lanes violation, provided his identification and did a majority of the speaking during the trooper's initial investigation, but the defendant was unable to provide her driver's license and, to continue his investigation, the trooper testified that he felt it was necessary to ask the driver to step out of the vehicle, and he detected an odor of alcohol emitting from the defendant, providing reasonable suspicion to conduct a field sobriety test, Evans.

Bicycle/Right side of roadway. State v. Elton | 2024-Ohio-1494 | 2nd Appellate District | 04/19/2024 Bench conviction of bicyclist of failure to ride his bicycle as near to the right side of the roadway as practicable, R.C. 4511.55(A), met the sufficiency and weight of evidence standards since officer testified that the defendant was riding his bicycle and there was enough space for the defendant to move over to the far-right side of the roadway, so vehicles could safely pass him and there were no parked cars, surface hazards or foreign, fixed or moving objects on the roadway that made it impractical for the defendant to travel on the right edge, and thus the exception in R.C. 4511.55(C) relieving a bicyclist from the obligation to ride as near to the right side of the roadway as practicable did not apply.

Workers' Compensation

Temporary total disability/New condition. State ex rel. David v. Indus. Comm. | 2024-Ohio-2790 | 10th Appellate District | 07/23/2024 In relator-claimant's petition for a writ of mandamus seeking to compel respondent-industrial commission to vacate its order denying relator temporary total disability (TTD) compensation, a limited writ of mandamus is granted for the commission to determine whether relator's inability to work during the requested period of disability is the direct result of an impairment arising from an injury or occupational disease or the direct result of reasons unrelated to the injury or occupational disease, R.C. 4123.56; the fact that an injured worker was not working prior to the claimed period of TTD does not automatically disqualify a claimant from receiving TTD compensation and the finding of maximum medical improvement on previously allowed conditions does not preclude compensation for a newly allowed condition.

Asbestos exposure/Notice of death/ Limitations. Hunter v. Canton Drop Forge, Inc. | 2024-Ohio-2725 | 5th Appellate District | 07/18/2024 In action claiming workers' compensation

benefits filed by plaintiff-wife of deceased employee who was exposed to asbestos while he was working for defendant-employer, trial court did not err in denying defendant's motions for summary judgment, directed verdict, and judgment notwithstanding the verdict, arguing that plaintiff did not provide the commission notice of death within one year, R.C. 4123.84, where the General Assembly expressed its intent for the two-year statute of limitations to file an application to industrial commission, bureau of worker's compensation, or self-insured employer imposed by R.C. 4123.85 to supersede the one-year statute of limitations to provide written notice of death or injury to the commission or bureau under R.C. 4123.84.

Total loss of use/Finger/Res judicata. State ex rel. Diamond v. Indus. Comm. | 2024-Ohio-2499 | 10th Appellate District | 06/28/2024 Claimant's petition for a writ of mandamus to compel industrial commission to vacate its order denying claim for payment of scheduled award for total loss of use is granted where relator's fingers were amputated at different locations and injury to one finger was found to have resulted in severance of some part of the proximal phalanx, so the injury must be treated as loss of a whole finger, R.C. 4123.57(B); also, res judicata does not bar the claim where claimant filed an earlier motion for two-thirds loss of his middle and index fingers and claimant's employer stood in the shoes of the bureau, accepting claimant's motion in its entirety and offering to pay claimant's two-thirds loss request without an order to do so, but employer's offer was not the equivalent of a court or agency conclusively deciding the matter in a formal proceeding.

Permanent total disability/ Psychological evidence/Dissent. State ex rel. Urban v. Wano Expiditing, Inc. | 2024-Ohio-2461 | 10th Appellate District | 06/27/2024 Employee's petition for a writ of mandamus to compel industrial commission to vacate its order denying permanent total disability compensation for workplace injuries is granted where, although physician's report correctly showed that employee's physical limitations constituted some evidence that employee could maintain sustained remunerative employment at a sedentary level, the commission failed to engage in an analysis of employee's psychological conditions in combination with physical limitations pursuant to Ohio Adm. Code 4121-3-34(D)(3)(i); there is a dissenting opinion in this case.

Loss of use/Continuing jurisdiction/ Mistake of fact. State ex rel. Ottinger v. B&B Wrecking & Excavating, Inc. | 2024-Ohio-1656 | Supreme Court of Ohio | 05/02/2024 In case in which claimant was injured by falling from roof and claimed loss of use of his legs where bureau vacated its original decision granting loss of use compensation to claimant on reasoning that there was a clear mistake of fact, prompting claimant to file a petition for a writ of mandamus to compel the bureau to vacate its denial of benefits, the court of appeals' denial of the mandamus writ is affirmed since, inter alia, to qualify for loss-of-use compensation under R.C. 4123.57(B), a claimant must demonstrate with medical evidence a total loss of use of a body part for all practical purposes, physician's report that claimant's allowed injuries did not result in a total, permanent loss of use of his legs is some evidence that supports staff hearing officer's determination that the bureau's order awarding claimant loss-of-use compensation was based on a mistake of fact, and a single mistake of fact or mistake of law is all that is needed to justify the commission's exercise of continuing jurisdiction.

Appeal/Pending/Continuing jurisdiction. Caldwell v. Whirlpool Corp. | 2024-Ohio-1625 | Supreme Court of Ohio | 05/01/2024 After employee's workers' compensation claim for allowance of additional conditions related to his permanent partial disability claim was administratively denied, the trial court's order, affirmed on appeal, granting summary judgment to employer on reasoning that employee's claim expired by operation of law under the limitations period set forth in R.C. 4123.52 is reversed since when a workers' compensation claimant perfects an appeal under R.C. 4123.512, the subsequent expiration of the commission's five-year period of continuing jurisdiction under R.C. 4123.52 does not cause the claim that is pending in court to expire as a matter of law.

Employer intentional tort/Expert's affidavit. Moore v. ThorWorks Indus., Inc. | 2024-Ohio-1617 | 6th Appellate District | 04/26/2024 In employee's R.C. 2745.01 intentional tort action against employer, arising from injury to employee when he fell into an unguarded mixer, trial court did not err in striking parts of employee's expert's affidavit which asserted, inter alia, that employer was aware of the need for railings and a grate guard to prevent injury, since employee's expert may not testify about the ultimate issue of employer's knowledge or awareness of the dangerous nature of a process or machine; as well, trial court's orders granting summary judgment to employer and denying employee's Civ.R. 60(B) motion are affirmed where evidence shows that employee was good at his job, was more knowledgeable about the mixer and its operation than any other employee, had operated the mixer for at least eight years, and did not consider it to be unsafe without the handrails or a grate guard.

Scheduled-loss of use/Collateral estoppel. State ex rel. Byk v. Indus. Comm. | 2024-Ohio-1598 | 10th Appellate District | 04/25/2024 Relator-surviving spouse's petition for a writ of mandamus to compel respondent-industrial commission to vacate its order denying her claim for accrued scheduled-loss compensation for decedent's loss of use of extremities due to an industrial accident is granted where decedent was entitled to apply for the benefit at the time of death and therefore R.C. 4123.60 allowed relator's claim, and denial of decedent's claim for loss of use under R.C. 4123.57(B) did not have a collateral estoppel effect on relator's claim because decedent died before judicial review of denial of his claim.