OHIO STATE BAR ASSOCIATION REPORT

A member publication of the Ohio State Bar Association

Ohio case law summaries from November 22 – February 18

In Case You Missed It The following are summaries of cases decided by Ohio courts between November 22, 2021 – February 18, 2022. To read the decisions in their entirety, please visit ohiobar.org/greenbook and enter the case name in the search field.

Administrative and Regulatory

License suspension. Crawford v. Ohio Dept. of Health, 2021-Ohio-4302 | 7th Appellate District | 12/01/2021 In contractor's administrative appeal of department of health's suspension of his lead abatement contractor's license charging violations while conducting projects, the trial court did not err in affirming department's decision since department provided contractor with legally sufficient notice of the violations and the opportunity to request a hearing pursuant to R.C. 119.07, department director or legal counsel were not required to testify at hearing, and suspension of license was the appropriate consequence under R.C. 3742.16.

License disqualification. Reed v. Dept. of Pub. Safety, 2021-Ohio-4314 | 8th Appellate District | 12/09/2021 Disqualification of truck driver's commercial driver's license under R.C. 4506.16(D)(5)(a) for two traffic violations is affirmed since driving while using a handheld telephone was a violation of a regulation and a "conviction" under R.C. 4506.01 because an administrative regulation issued under authority has the force and effect of law, and a conviction for improper lane use in another state qualifies as a second conviction because the applied law is substantially similar to R.C. 4511.33.

Appeal/Factual determination. TAP Mgt., Inc. v. Ohio Dept. of Commerce, 2021-Ohio-4390 | 10th Appellate District | 12/14/2021 In administrative appeal in which state department division asserts that the trial court erred in reversing a final cease and desist order and in finding that investor's financial interest in a joint venture was not a security subject to regulation by division, appeal is dismissed for lack of jurisdiction where the court's application of the George test to the facts of the joint venture did not turn the case into an issue of statutory interpretation, and the reviewing court lacks jurisdiction under R.C. 119.12(N) to resolve division's challenge to the factual determination made by the court.

Dispensary license. JG City L.L.C. v. State Pharmacy Bd., 2021-Ohio-4624 | 10th Appellate District | 12/30/2021 Affirming denial of appellant's application for a license to operate a retail medical marijuana dispensary was not error since the state pharmacy board's order denying appellant's application was in accordance with law where, considered as a whole, the process used by the state pharmacy board to score appellant's application satisfied the board's obligation under Ohio Adm. Code 3796:6-2-04(A) to award dispensary licenses on a competitive basis using the criteria set out in the notice for applications, and appellant's application finished third highest in a district where only two licenses were available.

Provider certification. Nalluri v. Ohio Bur. of Workers' Comp., 2021-Ohio-4625 | 10th Appellate District | 12/30/2021 In physician's administrative appeal of order affirming bureau of workers' compensation's denial of his application for certification as a provider in health partnership program, judgment is affirmed where physician previously pleaded guilty to workers' compensation fraud in violation of R.C. 2913.48, bureau was required to deny application as long as guilty plea remained in force, and mitigating circumstances are not relevant under the statute.

Unclaimed funds. Avaya Inc. v. Ohio Dept. of Commerce, Div. of Unclaimed Funds, 2021-Ohio-4626 | 10th Appellate District | 12/30/2021 In company's administrative appeal of denial of its claim for unclaimed funds reported by bank to division of unclaimed funds, the trial court erred in affirming division's final order denying claim since the company presented substantial evidence to establish its ownership of the unclaimed funds where it is the only entity doing business under its name, it established uniqueness of name to exclusion of any other entity, it produced evidence of relationship with bank, and R.C. Ch. 169 does not require proof of direct or temporal connection with holder of funds, R.C. 119.12(B).

Appeal. Cyr v. State Med. Bd. of Ohio, 2022-Ohio-25 | 10th Appellate District | 01/06/2022 In physician's administrative appeal of state medical board's decision to revoke her license, trial court did not err in dismissing appeal for lack of subject matter jurisdiction since physician failed to timely file notice of appeal, and a hearing is not required to determine whether physician sufficiently rebutted presumption of service of notice, R.C. 119.12.

Appeal/Mootness. Linder v. Ohio Dept. of Aging, 2022-Ohio-177 | 1st Appellate District | 01/26/2022 Dismissal of appeal of denial of applicant's application seeking certification by Ohio Department of Aging (ODA) as a home care attendant for ODA Medicaid waiver program was not error since the appeal was moot where applicant submitted a second application while appeal was pending and obtained certification, and applicant failed to present mootness-doctrine-exception arguments to the trial court and therefore forfeited the right to raise them for the first time on appeal, R.C. 173.39(B).

Animal

Dangerous dog. Wood Cty. Dog Warden v. Lathrop, 2022-Ohio-480 | 6th Appellate District | 02/18/2022 In dog owner's action contesting dog warden's designation of dog as dangerous pursuant to R.C. 955.11(A)(1)(a) after dog bit neighbor, the trial court erred on remand in reversing dangerous dog designation since video evidence and testimony showed that the dog was in a provoked state when neighbor arrived and that the dog attempted to bite neighbor before he raised his arms or formed a fist, and because evidence was not susceptible of more than one interpretation, the court abused its discretion in denying warden's objection to determination that bite was provoked.

Banking and Commercial

Return of funds. Cortland Savs. & Banking Co. v. Platinum Rapid Funding Group, Ltd., 2021-Ohio-4615 | 11th Appellate District | 12/30/2021 After borrower defaulted on loan, in bank's action filed against funding group alleging, inter alia, conversion and seeking return of funds transferred to funding group from borrower's account, representing borrower's accounts receivable proceeds to be paid to funding group under their agreement, the trial court erred in granting bank's motion for summary judgment even though bank's interest in accounts receivable attached to the accounts receivable proceeds upon payment and deposit, R.C. 1309.315(A), since funds transferred from borrower's account to funding group were transferred free of bank's interest in right to payment pursuant to R.C.1309.332(B).

Civil Rights

Legal representation. Henderson v. Shank, 2021-Ohio-4163 | 1st Appellate District | 11/24/2021 In inmate's action against his court-appointed counsel alleging that she violated his civil rights with respect to her representation of him in state clemency and other proceedings, the trial court did not err in granting motion to dismiss where counsel did not act under color of law while representing inmate, and therefore complaint failed to state a claim upon which relief could be granted, 42 U.S.C. 1983.

Constitutional claims/Immunity. Cleavenger v. B.O., 2022-Ohio-454 | 9th Appellate District | 02/16/2022 In plaintiff's action claiming that defendant-victim of an alleged crime deprived plaintiff of his constitutional rights for making false statements against plaintiff to law enforcement and testifying against him in a criminal trial, the trial court did not err in granting defendant's motion to dismiss since defendant had absolute immunity under 42 U.S.C. 1983 in connection with testimony, even if defendant was acting under color of state law, and plaintiff failed to adequately allege conspiracy to establish that defendant was not a private actor but was acting under color of state law in making statements to law enforcement before the trial, Civ.R. 12(B)(6).

Construction

Pension fund contributions. Ohio Carpenters' Pension Fund Bd. of Trustees v. Ramunno, 2021-Ohio-4667 | 7th Appellate District | 12/22/2021 In plaintiff-construction industry pension fund's fraudulent transfer and related claims action filed during pendency of federal lawsuit against defendants-construction business owners, who employed union construction workers, seeking to recover defendants' contribution owed to pension fund, summary judgment in favor of plaintiff was not error where evidence showed that defendants fraudulently transferred properties to themselves and their children without receipt of reasonably equivalent funds, that transfers caused companies to become insolvent, and that defendants did not send any money received from transfers to plaintiff, R.C. 1336.05 and 1336.04.

Contract. Broadway Concrete Invests., L.L.C. v. Masonry Contracting Corp., 2022-Ohio-19 | 8th Appellate District | 01/06/2022 In action for breach of contract in which plaintiff claimed that defendant did not make full payment for plaintiff's services, the trial court erred in ruling in favor of plaintiff since the purchase order constituted the entire contract, and the court improperly incorporated terms from plaintiff's quotation into the contract and then applied the evidence presented at trial to those terms.

Contract. Huger v. Ashenafi, 2022-Ohio-492 | 2nd Appellate District | 02/18/2022 In homeowner's action against contractor for failure to complete fence installation job to her satisfaction, the trial court did not err in adopting magistrate's decision awarding partial damages to homeowner where no objections to magistrate's decision, Civ.R. 53(D), were filed and damages were appropriately awarded for broken gate that was repaired by a third party.

Consumer

Filing legal action. Vesper v. Otterbein Lebanon, 2021-Ohio-4545 | 12th Appellate District | 12/27/2021 In relatives' action claiming that care facility violated the Consumer Sales Practices Act (CSPA) by filing a breach of contract action to recover money owed by decedent-resident, later dismissed by facility when decedent's Medicaid benefits were reinstated retroactively, trial court did not err in granting summary judgment to facility since the legal claims asserted by it against relatives were colorable and assertion of those claims did not constitute an unfair, deceptive or unconscionable act or practice under the CSPA, R.C. 1345.02 and 1345.03.

Sales Practices Act. Green Maple Ents., L.L.C. v. Forrester, 2021-Ohio-4640 | 7th Appellate District | 12/30/2021 In an action by home restoration company for breach of contract to recover payments still owing, the trial court did not err in ruling in favor of homeowners on their counterclaim for company's violation of the Consumer Sales Practices Act where evidence shows that homeowners were led to believe that a certain type of wood would be used to restore a room, but the company tried to use a different type of wood and then misinformed homeowners about the lack of supply of the requested wood, R.C. 1345.02(B).

Contracts

Breach. Razi v. Wedgewood Golf & Country Club, 2021-Ohio-4145 | 5th Appellate District | 11/22/2021 In club member's breach of contract action against country club for failure to pay back member's initiation fee at time of his resignation from membership, summary judgment in favor of club was not error where, although neither party retained a copy of agreement signed by member, the application for membership he would have signed clearly states that initiation fees are not refundable, and partial repayment under rules and regulations is conditioned on certain conditions which have yet to occur, Civ.R. 56(C).

Breach/Care facility. Montgomery at Carecore, L.L.C. v. Abbott, 2021-Ohio-4276 | 1st Appellate District | 12/08/2021 In care facility's breach of contract action against deceased resident's stepdaughter for failure to pay decedent's fees, summary judgment for stepdaughter was not error since stepdaughter was not a party to agreement between facility and resident, under state and federal law, a care facility may not require a third party to pay a resident's charges out of their own funds, and the agreement specifically allowed stepdaughter to acknowledge agreement without incurring personal financial liability.

Breach. Victoria's Secret Stores, L.L.C. v. Cintas Corp. No. 2, 2021-Ohio-4327 | 10th Appellate District | 12/09/2021 In store's breach of contract action against contractor, arising from water damage to merchandise when contractor's subcontractor was working on sprinkler system in shopping mall store, it was not error to rule in favor of contractor since evidence showed that water damage was caused by failure of sprinkler system to be properly drained before work began, and subcontractor had requested shopping mall to drain system, had completed the required forms, had paid the required fee, and had waited until the mall maintenance staff informed him that the sprinkler drain process was complete; argument that the mall was a subcontractor of contractor and that contractor failed to obtain the required insurance coverages was without merit.

Breach/Evidence/Discovery. Besch v. Williams, 2021-Ohio-4316 | 8th Appellate District | 12/09/2021 In plaintiff's breach of contract action against defendant seeking to recover an alleged cash down payment made for construction job, denial of plaintiff's motion for summary judgment was not error since plaintiff was unable to demonstrate proof of payment, and defendant's failure to timely respond to request for admissions did not entitle plaintiff to summary judgment because defendant's later testimony contradicted the admissions and constituted an implicit motion to withdraw admissions to allow case to be decided on its merits.

Breach/Arbitration. Nye v. DeLille Oxygen, Inc., 2021-Ohio-4364 | 3rd Appellate District | 12/13/2021 In plaintiff-business owner's action against defendants-gas companies alleging, inter alia, breach of stock purchase agreement that was entered into when defendants purchased shares of plaintiff's company, resulting in arbitrator's award to plaintiff, trial court did not err in denying defendants' motion to vacate arbitrator's award since the award is based on a schedule of payments and applicable interest rate delineated in the stock purchase agreement and therefore draws its essence from the agreement, and the parties authorized arbitrator to resolve dispute, so even if his interpretation was unreasonable there would not be grounds to vacate.

Breach. Lapkovitch v. Rankl & Ries Motorcars, Inc., 2021-Ohio-4436 | 5th Appellate District | 12/16/2021 In plaintiff-vehicle purchaser's action against defendant-car dealership alleging, inter alia, breach of contract for failure to disclose that engine in vehicle had been replaced with an engine made for another vehicle, summary judgment for defendant was not error since defendant disclaimed all warranties in the parties' retail sales contract, plaintiff failed to show any representations by defendant regarding the vehicle or the engine, and the value of vehicle was not diminished by the replacement engine; also, extended warranty separately purchased by plaintiff remained in full effect.

Settlement agreement. Kingsbury v. Cornerstone Family Office, L.L.C., 2022-Ohio-18 | 8th Appellate District | 01/06/2022 In action by beneficiary of family trusts against financial professionals, resulting in a global settlement agreement and release, the trial court did not err in enforcing the settlement agreement after beneficiary filed a declaratory action in probate court since the settlement agreement provided that the parties agreed to mediate any claims and beneficiary agreed not to sue financial professional.

Non-compete/Attorney fees. Ginn v. Stonecreek Dental Care, 2022-Ohio-51 | 12th Appellate District | 01/10/2022 In dental practice purchaser's action against seller for violation of non-compete clause and against practice to which seller moved for tortious interference with contract and with business relationships, resulting in judgments for purchaser, the trial court did not err in denying purchaser's motion for attorney fees in claim against practice since, inter alia, purchaser was awarded attorney fees in action against seller pursuant to their contract, purchaser released seller as a party through satisfaction of judgment, discharging him from any further obligations associated with the contract, and the other practice was not a party to the contract between purchaser and seller.

Settlement agreement/Damages. Metron Nutraceuticals, L.L.C. v. Thomas, 2022-Ohio-79 | 8th Appellate District | 01/13/2022 In plaintiff-nutraceutical company's action against defendant-distribution company alleging damages and seeking injunctive relief for defendant's failure to return product owned by plaintiff, resulting in an agreed judgment, the trial court did not err in awarding plaintiff damages for defendant's failure to comply with the agreed judgment since evidence demonstrated that defendant did not comply with the agreement, and the amount of damages equal to the retail value of unreturned product was appropriate because the court found that defendant's conduct was akin to theft or conversion.

Breach/Pleading. Ridge-Pleasant Valley, Inc. v. Navin, 2022-Ohio-130 | 8th Appellate District | 01/20/2022 In nursing home's breach of implied contract and related claims action against former resident for failure to pay for services, summary judgment in favor of home is affirmed since statements provided by resident did not identify the payment source to show that he did not owe the alleged debt; also, resident failed to comply with Civ.R. 12(F) in filing a counterclaim and he was provided notice and an opportunity to amend stricken filings, but failed to do so.

Breach. Brock v. Servpro, 2022-Ohio-158 | 12th Appellate District | 01/24/2022 In homeowner's breach of contract action against restoration company for failure to properly perform work on flooded basement, summary judgment in favor of company was not error where owner readily admitted in testimony that he did not suffer any compensable damages, and therefore he failed to show a breach of contract.

Dismissal. Hecht v. Equity Trust Co., 2022-Ohio-198 | 8th Appellate District | 01/27/2022 In plaintiff's breach of contract action against defendant-investment custodian claiming it did not timely or correctly process account deposits, resulting in late fees and diminished value of investment account, the trial court erred in granting defendant's motion to dismiss since defendant did not establish that it had mailed an amended agreement to plaintiff or that plaintiff consented to amendment under terms of prior agreement, and because evidence was outside the complaint, the motion must be converted to one for summary judgment pursuant to Civ.R. 12(B).

Corporate and Business

Operating agreement/Arbitration. Kennedy v. Stadtlander, 2021-Ohio-4167 | 8th Appellate District | 11/24/2021 In plaintiff-minority shareholder's action against defendant-majority shareholder seeking declaratory judgment regarding his membership interest after he was unable to exercise his put option under the stock option agreement at the time of his employment termination, the trial court erred in granting defendant's motion to compel arbitration where the company's operating agreement contained an arbitration clause, but plaintiff's claims arose out of the stock option agreement which is a complete and independent agreement with no arbitration clause.

Foreign corporation/Standing. Promac Technologies, L.L.C. v. Fabrication Automation, L.L.C., 2021-Ohio-4272 | 1st Appellate District | 12/08/2021 In plaintiff-out-of-state LLC's breach of contract action against defendant-supplier, trial court did not err in granting summary judgment to defendant based on lack of standing where plaintiff's activities in the state were not casual, sporadic or occasional, there was continuous communication between the parties that resulted in a contract for a regular and ongoing business relationship, and plaintiff was required to register to do business in Ohio in order to maintain a lawsuit, R.C. 1705.58.

Receiver/Claims/Objections. Lok Home v. Robbins Co., 2022-Ohio-304 | 8th Appellate District | 02/03/2022 In plaintiff-manufacturing company president's action seeking cognovit judgment against defendant-manufacturing company and appointment of receiver for company, resulting in disallowance of intervenor-majority shareholder company's claim submitted to receiver, trial court did not err in denying intervenor's Civ.R. 60(B) motion for relief from judgment where intervenor did not file a response to receiver's claim objection, intervenor's failure to attend claims hearing was not excusable neglect because it had actual notice and its intern was present at hearing, and intern's authority to attend hearing in counsel's absence was not approved by the court.

Fiduciary duty/Limitations/Damages. Razavi v. Vasila, 2022-Ohio-463 | 5th Appellate District | 02/15/2022 In plaintiff-shareholder's action against defendants-manufacturing company and director alleging, inter alia, breach of fiduciary duty for misuse of company funds, summary judgment in favor of defendants was not error since most claims were outside the statute of limitations, R.C. 2305.09(D), and plaintiff failed to identify any damages or show that he suffered harm from ongoing breach of fiduciary duty for excessive compensation and cash reserves, and therefore any error did not affect outcome of the case.

Shareholder dispute/Standing. Gissentaner v. Buckeye Sauce Corp., 2022-Ohio-468 | 8th Appellate District | 02/17/2022 In plaintiffs-deceased shareholder's heirs' action against defendant-family restaurant corporation challenging the distribution of life insurance proceeds on the death of a shareholder whose shares would be retired by the company, the trial court did not err in finding that plaintiffs were minority shareholders, even though the shares they inherited from shareholder were subject to corporate redemption pursuant to shareholders' buy-sell agreement, and as minority shareholders, they had standing to claim that the majority shareholder breached the company's buy-sell agreement and to challenge distribution of insurance proceeds.

Criminal

Criminal Weapons offense. State v. Geddes, 2021-Ohio-4115 | 12th Appellate District | 11/22/2021 In a conviction of having weapons while under disability, R.C. 2923.13(A)(5), weapons disability was not relieved in 2015 when, in a prior case, the trial court determined appellant was no longer a mentally ill person subject to hospitalization and terminated the commitment imposed in 2012 since the 2015 judgment entry is not legally sufficient pursuant to R.C. 2923.13 or 2923.14 to relieve appellant from the weapons disability in the absence of additional evidence required by those statutes.

Discovery. State v. Ward, 2021-Ohio-4116 | 12th Appellate District | 11/22/2021 In a conviction of sex offenses, the state did not commit a Brady violation by not disclosing GPS records that showed the location of appellant's-trooper's state vehicle during his alleged sexual offenses where the GPS coordinates were public records and thus available to appellant at any point prior to the trial, the state had provided other GPS records prior to the trial and thus appellant was aware that the state had GPS information and for a specific timeframe and he could easily have requested different or additional records to account for other times.

Ineffective assistance. State v. Mugrage, 2021-Ohio-4136 | 11th Appellate District | 11/22/2021 In a conviction of sexual offenses involving a minor, the defense counsel did not provide ineffective assistance by not objecting to holding a jury trial during a COVID pandemic since appellant did not demonstrate there was any per se prejudicial effect from holding a jury trial during the COVID pandemic, and the record reflects that the trial court, state and defense counsel were well aware of and took the necessary safety precautions, and defendant fails to demonstrate prejudice.

Plea withdrawal. State v. Feathers, 2021-Ohio-4137 | 11th Appellate District | 11/22/2021 Following a 2008 conviction by plea of, inter alia, aggravated burglary, grant of judicial release in 2015 and revocation of judicial release in 2019, denial of pro se 2020 motion to withdraw plea as void was not error since res judicata bars claim that domestic violence charges should not have been indicted together with the other offenses due to the difference in time and location of the crimes since it could have been raised on direct appeal and there is no showing that the trial court lacked jurisdiction.

Reopening. State v. Rice, 2021-Ohio-4172 | 8th Appellate District | 11/22/2021 Application to re-open appeal, App.R. 26(B), was not error where claim that appellate counsel was ineffective for not arguing that trial counsel was ineffective for not calling a co-defendant to testify at trial is without merit since a decision to call a witness is within the purview of defense counsel's trial strategy and is not considered deficient performance absent a showing of prejudice where claim was based solely on co-defendant's general statement that appellant had nothing to do with what occurred.

Jury trial. State v. Krankovich, 2021-Ohio-4297 | 7th Appellate District | 11/22/2021 In a bench conviction of first-degree misdemeanors, aggravated menacing and resisting arrest, appellant was denied her constitutional right to a jury trial since she filed a timely written

jury demand, Crim.R. 23(A), and never made a written waiver of that right, R.C. 2945.05; reversed and remanded for new trial.

Jail-time credit. State v. Soupe, 2021-Ohio-4114 | 12th Appellate District | 11/22/2021 In a conviction by plea in two cases, appeal of denial of jail-time credit is dismissed since the case that the jail-time credit was alleged to be incorrect was untimely filed in the court of appeals, App.R. 4, App.R. 5 and R.C. 2505.04, and in the case that was timely appealed, the correct jail-time credit of two days was awarded under R.C. 2967.191 for the time appellant spent in jail in lieu of bail.

Court costs. State v. Martin, 2021-Ohio-4213 | 8th Appellate District | 11/22/2021 Following a 2010 conviction by plea of, inter alia, failure to comply that was affirmed, denial of 2018 motion to vacate court costs and denial of 2019 mandamus action to vacate costs, the trial court's denial of 2020 motion to "vacate void order" was not error since claims that the judgment for court costs went "dormant" once appellant completed his prison sentence is barred by res judicata since he could have raised issue in his direct appeal or in his 2018 motion since R.C. 2947.23 allows a defendant to raise the issue of court costs once after sentencing.

Post-conviction relief. State v. Wade, 2021-Ohio-4090 | 10th Appellate District | 11/23/2021 Following juvenile's conviction of, inter alia, multiple counts of aggravated murder that on appeal was remanded for re-sentencing, denial without a hearing of petition for post-conviction relief was not error where claim of ineffective assistance of counsel to consider requesting a mitigation expert was not supported by any evidentiary documents containing operative facts to demonstrate ineffective assistance since appellant presented no evidence that any mitigating evidence existed that his re-sentencing counsel had failed to present.

Plea withdrawal. State v. Griffith, 2021-Ohio-4165 | 5th Appellate District | 11/23/2021 In a conviction by plea of complicity to aggravated burglary and one count of complicity to aggravated robbery, denial of motion to withdraw plea was error where the fact that the negotiated plea and agreed sentence would be void, rather than voidable, if appellant failed to testify as agreed is stated throughout the plea agreement as well as throughout discussions on the record, and thus the entire plea agreement, not just the agreed sentence, was automatically void according to its own terms.

Plea withdrawal. State v. Jefferson, 2021-Ohio-4188 | 10th Appellate District | 11/23/2021 Following a conviction by plea of sexual offenses of a minor that was affirmed and denial of 2014 motion to withdraw plea, denial of 2021 motion to withdraw plea based on ineffective assistance of counsel was not error since claim of ineffective assistance was raised and denied on direct appeal, as well as in appellant's 2014 motion to withdraw plea, and thus claim is barred by res judicata.

Dismissal. State v. Lamb, 2021-Ohio-4120 | Supreme Court of Ohio | 11/24/2021 Appeal is dismissed as having been improvidently accepted.

Jury verdict form. State v. Oliver, 2021-Ohio-4153 | 9th Appellate District | 11/24/2021 In a conviction of, inter alia, carrying a concealed weapon, R.C. 2923.12(A)(2) and (F)(1), jury verdict form for the charge of carrying a concealed weapon failed to specify the degree of the offense or to include any aggravating elements, and thus appellant could only have been convicted of a first-degree misdemeanor, R.C. 2945.75(A)(2) and Pelfrey.

New trial. State v. Scott, 2021-Ohio-4160 | 1st Appellate District | 11/24/2021 Following a 2013 conviction of two counts of rape that was affirmed, denial of 2020 Crim.R. 33(A)(6) new trial motion was not error since the trial record could reasonably be read to contradict the evidence offered in support of appellant's claim that he had an intellectual disability that prevented him from timely discovering and presenting the evidence that his new-trial motion depended on, including his familiarity of the criminal justice system as evidenced by his conduct during the trial.

Aggravated menacing. State v. White, 2021-Ohio-4292 | 7th Appellate District | 11/24/2021 In a conviction of, inter alia, aggravated burglary, R.C. 2911.11(A)(2), and four counts of aggravated menacing, R.C. 2903.21(A), conviction of one of the counts of aggravated menacing is reversed where although three victims testified that based on appellant's conduct in their presence threatening them with a gun that they believed appellant intended to harm them, fourth person who was present during the encounter with defendant did not testify, and no other evidence was presented that person was in fear of appellant during the encounter.

Grand jury. State v. Gillispie, 2021-Ohio-4157 | 2nd Appellate District | 11/24/2021 Following a conviction of three counts of rape and subsequent federal court grant of habeas corpus with the rape charges later dismissed with prejudice, grant of motion for disclosure of grand jury transcripts for use in appellant's pending federal lawsuit alleging violations of 42 U.S.C.1983 and for wrongful imprisonment was error in part since record supported releasing only portions of the transcript of one witness, the lead investigator, since it was otherwise unobtainable, and there was no showing of a particularized need for the release of grand jury testimony of the three alleged rape victims.

Violent offender registration/ Retroactive application. State v. Pilkington, 2021-Ohio-4119 | Supreme Court of Ohio | 11/24/2021 Judgment of the court of appeals is reversed on the authority of State v. Hubbard, __ Ohio St.3d __, 2021-Ohio-3710, __ N.E.3d __, and State v. Jarvis, __ Ohio St.3d __, 2021-Ohio-3712, __ N.E.3d __.

Dismissal. State v. Baber, 2021-Ohio-4121 | Supreme Court of Ohio | 11/24/2021 Appeal is dismissed as having been improvidently accepted.

Evidence. State v. Davison, 2021-Ohio-4184 | 5th Appellate District | 11/24/2021 In a conviction of, inter alia, aggravated burglary, admission of prosecutor's demonstrative evidence on how to alter time stamps on Snapchat without supporting testimony was not plain error since the prosecutor did not demonstrate the alteration of a time stamp on Snapchat, but only confirmed with defendant on cross-examination that a false date and time could be added to the recording that merely served to demonstrate what the sworn witness had testified is possible when using the Snapchat application.

Post-conviction relief. State v. Frazier, 2021-Ohio-4155 | 2nd Appellate District | 11/24/2021 Following a 2008 conviction of two felonious assault offenses and a weapons offense that was affirmed and denial of three post-conviction motions, denial of 2021 application

to "vacate and set aside convictions and sentence" claims that the trial court failed to merge offenses as allied offenses and that defense counsel provided ineffective assistance by not arguing for merger are barred by res judicata since claims could have been raised in the direct appeal.

Jail-time credit. State v. Jones, 2021-Ohio-4175 | 8th Appellate District | 11/24/2021 In a conviction by plea of drug offenses, the trial court did not err in denying jail-time credit for the days appellant was held in county jail awaiting the disposition of this case while he was also serving time for an unrelated community control violation matter in another case, R.C. 2967.191.

Tampering with evidence/Complicity. State v. Warner, 2021-Ohio-4182 | 3rd Appellate District | 11/29/2021 In a bench conviction of leaving the scene of an accident/complicity, R.C. 2923.03(A)(2) and 4549.02(A)(1)/(B)(2)(b), and tampering with evidence/complicity, R.C. 2923.03(A)(2) and 2921.12(A)(1), claim that convictions were not supported by sufficient evidence because of specific statements that the trial court made on the record explaining its "reasonings" is without merit since there is no obligation for a court to make factual findings or to express its reasoning that led to the general finding, Crim.R. 23(C).

Search. State v. Quin, 2021-Ohio-4205 | 5th Appellate District | 11/29/2021 In a prosecution of aggravated vehicular homicide, R.C. 2903.06(A)(2)(a), grant of motion to suppress search of defendant's vehicle was not error since the affidavit does not set forth any facts supporting a basis for affiant's conclusion that defendant ran a stop sign, nor affiant's suspicion of alcohol impairment where affidavit does not refer to an accident report or to witness statements, and the "good faith" exception did not apply since the conclusions in the affidavit were not supported by any factual assertions.

Post-conviction relief. State v. Mitchell, 2021-Ohio-4386 | 4th Appellate District | 11/29/2021 Following a 2013 conviction by plea of, inter alia, aggravated robbery, R.C. 2911.01(A), that was affirmed, the trial court did not err in denying appellant's 2019 "Motion to Vacate or Set Aside Judgment" for the state's alleged failure to use reasonable diligence in bringing appellant from Mississippi where he was serving a sentence, to Ohio for the Ohio charges since the motion is treated as an untimely filed petition for post-conviction relief, R.C. 2953.21(A)(2)(a), and appellant failed to meet the exception to the time requirement for filing a petition provided in R.C. 2953.23.

Obstructing official business/ Resisting arrest. State v. Williams, 2021-Ohio-4200 | 5th Appellate District | 11/29/2021 Bench conviction of obstructing official business, R.C. 2921.31, and resisting arrest, R.C. 2921.33, met the sufficiency and weight of evidence standards since appellant's repeated failure to comply with the officers' requests to exit the house constituted affirmative acts which supported a conviction for obstructing official business, and officers had probable cause to believe that the defendant's conduct amounted to an offense after he refused to comply with officers' requests and physically struggled with them even after he was tasered.

Competency. State v. Lanier, 2021-Ohio-4194 | 10th Appellate District | 11/30/2021 Following trial court's finding defendant incompetent to stand trial in prosecution of, inter alia, two counts of murder, grant of attending psychiatrist's petition requesting authorization to administer medication to appellant involuntarily was not error where psychiatrist's testimony supported the conclusion that the medication was likely to render appellant competent to stand trial and unlikely to impair her ability to assist counsel, that there were no lesser restrictive methods, and that the expected side effects from the medication would be minimal, R.C. 2945.38(B)(1)(c).

Evidence. State v. Daylong, 2021-Ohio-4192 | 10th Appellate District | 11/30/2021 In a conviction of, inter alia, attempted burglary, menacing by stalking and violation of a protection order, admission of other-acts evidence through testimony of defendant's ex-girlfriend was not inadmissible other acts evidence, Crim.R. 404(B), since victim's testimony was admissible as other-acts evidence of modus operandi on the issue of identity where defendant argued there was no eyewitness nor physical evidence connecting him to three of the six charges, and thus the other-acts evidence was highly probative of identity, and the trial court provided a limiting instruction to the jury.

Self-representation. State v. Williams, 2021-Ohio-4203 | 5th Appellate District | 11/30/2021 In a conviction of felonious assault and domestic violence, the trial court did not err in granting defendant's motion to represent himself where the court engaged in an extensive colloquy with defendant and made a sufficient inquiry in determining that the defendant fully understood and intelligently relinquished the right to counsel.

Right to counsel. State v. Svoboda, 2021-Ohio-4197 | 1st Appellate District | 12/01/2021 In a conviction of sexual offenses of minor stepdaughter, the Sixth Amendment right to counsel was not violated by the state's search of defendant's legal paperwork from his jail cell in an attempt to ascertain whether defendant had obtained from defense counsel the transcript of his stepdaughter's interview with a children's center that the state provided for defense counsel only per Crim.R. 16(C) where the state denied that any protected defense information was obtained from the search, and defendant incurred no prejudice since the parties agreed to an appointment of a special prosecutor who stated he obtained no information arising from that search.

Restitution. State v. Conde, 2021-Ohio-4222 | 10th Appellate District | 12/02/2021 Following a 2015 conviction by plea of theft and forgery and imposition of community control conditioned on payment of restitution, the trial court erred in revoking community control for non-payment of restitution where court failed to make a finding either that appellant's failure to pay was willful or that despite a bona fide effort, an alternative means of punishment would not be adequate, Bearden.

Identification. State v. Shepherd, 2021-Ohio-4230 | 2nd Appellate District | 12/03/2021 In a conviction of, inter alia, two counts of attempted aggravated murder, denial of motion to suppress photo lineup and eyewitness identification was not error where, although the photo array did not fully comply with the R.C. 2933.83 requirement that the array include a "confidence statement," appellant did not show that the identification procedure was unduly suggestive where the eyewitness knew the shooter and identified him on Facebook before being shown the photo array.

Ineffective assistance. State v. King, 2021-Ohio-4228 | 2nd Appellate District | 12/03/2021 In a bench conviction of domestic violence, R.C. 2929.25(A), claim of ineffective assistance of counsel is without merit where claim that counsel failed to present any expert medical evidence that defendant had injuries preventing him from grabbing victim by her throat causing injury to contradict victim's claim since claim that testimony about a "possible" injury was speculative, and investigating officer testified he did not notice any limitations in defendant's movements that would have prevented him from injuring the victim in the manner described by the victim.

Search. State v. Benge, 2021-Ohio-4226 | 5th Appellate District | 12/03/2021 In a prosecution of drug offense, grant of motion to suppress was not error where troopers had no reasonable suspicion of a traffic violation where dash-cam video did not show a traffic violation of failing to stop at a stop bar and it was not a violation for the driver to lawfully stop at or before the stop bar and edge toward the intersection as it safely completed a right turn on red, R.C. 4511.13, and the state did not argue the officer in good faith misinterpreted the requirements or application of R.C. 4511.13.

Post-conviction relief. State v. Elkins, 2021-Ohio-4231 | 6th Appellate District | 12/03/2021 Following a 2008 conviction of three counts of complicity to aggravated robbery, R.C. 2911.01(A)(1) and 2923.03, imposition of consecutive prison sentences totaling 24 years that was affirmed and denial of pro se post-conviction motions challenging sentence as void, denial of 2021 pro se motion to correct void sentence is barred by res judicata since appellant raised the issue in his direct appeal and in prior post-conviction motions, Henderson.

Sealing. In re C.H., 2021-Ohio-4233 | 6th Appellate District | 12/03/2021 Denial of application to seal multiple juvenile delinquency adjudications was not error where appellant did not claim that the trial court did not consider the R.C. 2151.356(C) elements in its conclusion that appellant had not been "rehabilitated to a satisfactory degree," the court did not err by relying on the number of delinquency cases involved and the severity of the felony gross sexual imposition delinquency, and in concluding that appellant has not been rehabilitated to a degree to warrant the sealing of the record.

Jury instruction. State v. Bush, 2021-Ohio-4269 | 5th Appellate District | 12/03/2021 In a conviction of, inter alia, failure to stop after an accident, R.C. 4549.02, the trial court committed plain error in its jury instructions and in the verdict form submitted to the jury on the failure to stop charge since the instructions were insufficient to support a second-degree felony finding because the special findings attendant to the verdict form were insufficient by combining the elements that the accident or collision resulted in "serious physical harm" or that it resulted in "death to a person."

Post-conviction relief. State v. Conard, 2021-Ohio-4261 | 11th Appellate District | 12/06/2021 Denial of pro se petition for post-conviction relief was not error where untimely filed, R.C. 2953.21(A)(2)(a), and petition contains no allegations that appellant was unavoidably prevented from discovery of the facts upon which he relies to present his claims for relief or that the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in his situation as required by R.C. 2953.23(A)(1)(a)(i) for the consideration of an untimely filed petition.

Witnesses. State v. Landingham, 2021-Ohio-4258 | 11th Appellate District | 12/06/2021 In a conviction of first-degree misdemeanor assault, R.C. 2903.13(A), the trial court did not err by allowing a witness diagnosed with paranoid schizophrenia to testify over appellant's challenge to his competency where the trial court engaged in a colloquy with witness and witness' responses demonstrate that it was not an abuse of discretion to permit the witness to testify, and appellant did cross-examine the witness as to his faulty recollection and the parameters of his mental illness that related to his credibility, not his competency.

Continuance. State v. Urbina, 2021-Ohio-4254 | 3rd Appellate District | 12/06/2021 Following a 2006 conviction of, inter alia, robbery, appellant was granted judicial release in 2019 and placed on community control that he violated, re-imposition of remainder of prison sentence was not error since the court's decision to deny a continuance did not violate appellant's right to due process where he had been granted three prior continuances, and he failed to justify the added inconvenience to the litigants, witnesses and the court since the documents provided to him were uncomplicated and either immaterial to his defense or was information previously conveyed or readily available to him.

Reopening. State v. Martin, 2021-Ohio-4290 | 7th Appellate District | 12/06/2021 Application to re-open appeal, App.R. 26(B), is denied since application was untimely filed and failed to show good cause, App.R. 26(B)(2)(b), since claim that COVID-19 pandemic prevented appellant from timely filing the application is without merit where the application was filed well past expiration of the tolling order.

Sealing. State v. Cruz, 2021-Ohio-4241 | 12th Appellate District | 12/06/2021 In applications to seal the record of four convictions of contempt for failure to pay a fine and a dismissed charge of domestic violence, the trial court erred where it summarily dismissed the application for the contempt convictions since R.C. 2953.52(B)(2)(a) and (b) require the court to make findings, and R.C. 2953.52(B)(2)(c) and (d) require the court to consider applicant's eligibility, and the court also erred by failing to determine whether appellant's prior convictions are all misdemeanors or felonies of the fifth or fourth degree.

Reopening. State v. Thorpe, 2021-Ohio-4307 | 8th Appellate District | 12/06/2021 Application to re-open appeal, App.R. 26(B), is denied where untimely filed and no good cause shown for the delay, App.R. 26(B)(1) and (2)(b), and the filing of other post-judgment motions do not toll the time for the timely filing of an App.R. 26(B) application.

Ineffective assistance. State v. Bankston, 2021-Ohio-4332 | 11th Appellate District | 12/06/2021 In a conviction of, inter alia, felony murder, defense counsel did not provide ineffective assistance by not objecting to testimonial evidence by officers regarding blood spatter or castoff, by not objecting to videos of interviews of defendant wearing jail clothing played for the jury, or by not requesting an instruction on reckless homicide.

Post-conviction relief. State v. Lewis, 2021-Ohio-4264 | 11th Appellate District | 12/06/2021 Following a 2010 conviction of four counts of rape that was affirmed, denial of 2020 pro se motion for leave of the court to file a motion to correct a void sentence that

the trial court sua sponte treated as anuntimely petition for post-conviction relief that did not meet the exceptions to timeliness in R.C. 2953.23(A)(1) and (2), and appellant's claim that he was denied due process is without merit since where there is a decision that a petition is time-barred, the petitioner knows exactly why his petition was dismissed.

Jury instruction. State v. Stoychoff, 2021-Ohio-4248 | 3rd Appellate District | 12/06/2021 In a conviction of, inter alia, grand theft of a motor vehicle, the trial court did not err in denying defendant's requested jury instruction on unauthorized use of a motor vehicle since evidence presented did not reasonably support both an acquittal on the crime charged and a conviction on the lesser-included offense where appellant's conduct in engaging in a physical altercation with the owner to stay in the owner's vehicle and then fleeing from law enforcement officers was strongly corroborative of his criminal purpose to permanently deprive the owner of the vehicle.

Ineffective assistance. State v. Green, 2021-Ohio-4249 | 3rd Appellate District | 12/06/2021 In a conviction by plea of drug offenses, appellant did not receive ineffective assistance of counsel that made his guilty plea less than knowing and voluntary where the record fails to demonstrate any breakdown in communication or cooperation that would have violated appellant's constitutional right to effective assistance of counsel, but rather the record indicates the court thoroughly considered the request for substitute counsel, but it found the request was neither timely nor supported by good cause.

Evidence. State v. Doyle, 2021-Ohio-4243 | 12th Appellate District | 12/06/2021 In a bench conviction of domestic violence, R.C. 2919.25(A), the trial court did not err in not permitting defendant to question victim about a protection order that defendant obtained against victim following the incident that led to the prosecution in this case since it was not relevant to the events on the date in this case, and defendant was permitted to present evidence of how past violent incidents with the victim impacted her state of mind on the date that she struck victim that led to her prosecution in this case.

Search. State v. Brunk, 2021-Ohio-4270 | 5th Appellate District | 12/06/2021 In a conviction by plea of drug possession, R.C. 2925.11, denial of motion to suppress was not error since officer had reasonable cause to make a traffic stop for a traffic violation, and officer's smell of raw marijuana odor prior to the search of appellant's vehicle provided probable cause to search the vehicle.

Violation of a protection order. State v. K.A.T., 2021-Ohio-4293 | 7th Appellate District | 12/06/2021 Bench conviction of violation of a protection order, R.C. 2919.27(A)(1), met the sufficiency and weight of evidence standards where the protected person, appellant's next-door neighbor, testified that while in his yard, he heard appellant make two threatening statements from his room, demonstrating a heedless indifference to the risk that the protected party heard the statements, notwithstanding appellant's claim the words were part of a play that he was practicing since the trial court as trier of fact could reasonably conclude the state proved the offense beyond a reasonable doubt.

Sexual battery. State v. Perpignand, 2021-Ohio-4277 | 10th Appellate District | 12/07/2021 Conviction of sexual battery, R.C. 2907.03(A)(6), met the sufficiency and weight of evidence standards where victim was being evaluated pursuant to a court order in a criminal case against her at a facility where appellant was employed, he had various duties with authority over patients in exercising his job responsibilities, and there was DNA evidence of appellant on victim's breasts; jury did not lose its way in making its credibility determinations.

Post-conviction relief. State v. Hobbs, 2021-Ohio-4278 | 10th Appellate District | 12/07/2021 Following a 2014 conviction of, inter alia, murder, R.C. 2903.02, that was affirmed, denial of 2020 pro se motions to correct a void sentence and to correct a void judgment was not error since appellant's claim that the trial court sentenced him to a stated sentence rather than an indeterminate sentence concerns a sentencing issue that is barred by res judicata since issue could have been raised in his direct appeal, Harper.

Post-conviction relief. State v. Lavender, 2021-Ohio-4274 | 1st Appellate District | 12/08/2021 Following a 2018 conviction of aggravated murder that was affirmed, the trial court erred in denying petition for post-conviction relief by holding that petitioner's claims were barred by res judicata and were not supported by credible evidence since the court's findings of fact and conclusions of law do not adequately apprise the petitioner and the reviewing court of the legal and evidentiary bases for the decision denying the petition, R.C. 2953.21(H); cause is remanded.

Self-defense. State v. Sarge, 2021-Ohio-4379 | 5th Appellate District | 12/09/2021 In a conviction of, inter alia, murder, R.C. 2903.02(A), the state proved beyond a reasonable doubt that defendant did not act in self-defense when he shot victim where the state presented evidence contradicting defendant's claim that victim was close enough to defendant to grab at the barrel of the gun or to have touched it, negating a bona fide belief that defendant was in imminent danger of death or great bodily harm from victim and that use of deadly force was his only means of escape, R.C. 2901.05.

Bond. State v. Jackson, 2021-Ohio-4320 | 8th Appellate District | 12/09/2021 In two actions against defendant, he posted bond in each action, but was referred for a competency determination and found competent to stand trial, the trial court erred in revoking bond in the first case and in denying defendant's motion for release on bond in the second case where the court failed to provide reasons to support its findings, the state did not present any evidence regarding any of the offenses or that defendant violated any bond conditions, and no evidence was presented that defendant had mental health issues or threatened violence, R.C. 2937.222(A) and (B).

New trial. State v. Briscoe, 2021-Ohio-4317 | 8th Appellate District | 12/09/2021 Following a 2007 conviction of, inter alia, murder, denial of 2021 motion for leave to file a delayed motion for a new trial was not error where claim that the state withheld a witness' statement that he did not see defendant was not supported by affidavits or other evidence to show that the state failed to produce a statement in discovery; also, denial of motion for re-testing fingerprint evidence was not error since alleged error could have been raised on direct appeal and is barred by res judicata.

Post-conviction relief. State v. Arroyo-Garcia, 2021-Ohio-4325 | 10th Appellate District | 12/09/2021 Following a 2015 conviction by plea to four counts of trafficking in cocaine, denial of 2019 pro se motion to vacate void judgment, treated as an untimely second petition for post-conviction relief, R.C. 2953.21(A)(2), was not error where appellant failed to satisfy the requirements of R.C. 2953.23(A) for the consideration of an untimely filed petition; however, the court of appeals concludes that the trial court should have dismissed the petition for lack of jurisdiction rather than denying the petition.

Attempted burglary. State v. Paro, 2021-Ohio-4326 | 10th Appellate District | 12/09/2021 Bench conviction of attempted burglary, R.C. 2923.02/2911.12, met the sufficiency and weight of evidence standards where victim testified appellant had a former relationship with her, called her and told her he was coming over with a gun and would drag her out of her apartment, that he repeatedly struck her door and attempted to enter by striking victim's window that was supported by victim's phone video and corroborated by officers and, one officer, in responding to scene, testified he encountered defendant in victim's apartment parking lot and defendant admitted he had been at victim's apartment.

Fifth Amendment. State v. Gillman, 2021-Ohio-4377 | 5th Appellate District | 12/09/2021 In a conviction of burglary, R.C. 2911.12(A)(1), the trial court did not commit plain error in not declaring a mistrial or issue a curative instruction sua sponte after prosecutor elicited testimony from an officer of appellant's pre-arrest silence where officer testified that appellant declined an interview, it was harmless error since appellant testified in his own defense, thus waiving his Fifth Amendment right to remain silent, and he testified he would have talked to police if he had been contacted by them.

Post-conviction relief. State v. Ali, 2021-Ohio-4303 | 8th Appellate District | 12/09/2021 Following a 2006 conviction of, inter alia, five counts of rape of a person under 13 years-old that was affirmed and denial of multiple post-conviction challenges, denial of 2021 motion to correct a void sentence was not error since it is treated as a petition for post-conviction relief and is barred by res judicata since any alleged sentencing error could have been raised in appellant's direct appeal, Harper.

Self-defense. State v. Grayson, 2021-Ohio-4312 | 8th Appellate District | 12/09/2021 In a bench conviction of two counts of felonious assault, R.C. 2903.11(A)(1) and (A)(2), the trial court did not err in finding defendant did not act in self-defense where she testified she did not inflict the injuries victim sustained during their physical altercation and, moreover, evidence was presented that defendant was with another individual in the middle of the street that victim was driving on, and victim asked them to move but they did not and defendant charged victim's car, resulting in victim's injuries.

Pattern of corrupt activity. State v. Walker, 2021-Ohio-4321 | 10th Appellate District | 12/09/2021 On remand from the Ohio Supreme Court, the court of appeals affirms the trial court's judgment of conviction of engaging in a pattern of corrupt activity since there was sufficient evidence to satisfy the monetary threshold in order to support appellant's conviction since the state presented evidence that, in addition to appellant, another man apprehended inside the house at the time police executed the search warrant had approximately $1,200 on his person when police searched him, satisfying the monetary threshold for a second instance of corrupt activity.

Self-defense. State v. Angel, 2021-Ohio-4322 | 10th Appellate District | 12/09/2021 In a conviction of murder, R.C. 2903.02(A), the state presented sufficient evidence that defendant did not act in self-defense where he left a fight in his yard and was not pursued, obtained a weapon in his residence, exited and re-engaged with victim in the yard, and thus defendant became the aggressor and did not act in self-defense.

Post-conviction relief. State v. Hawkins, 2021-Ohio-4328 | 10th Appellate District | 12/09/2021 Following a 1997 conviction of, inter alia, two counts of aggravated murder that was affirmed, and multiple post-conviction motions, including a 2011 petition for post-conviction relief, denial of 2021 "Motion to Correct Void Sentence" was not error where claim that the trial court erred by imposing separate sentences on the two aggravated murder counts after merging those offenses, rendering the sentence void, is without merit since claim had been raised previously and denied, and thus a further challenge is barred by res judicata.

Confrontation Clause. State v. Banks, 2021-Ohio-4330 | 1st Appellate District | 12/10/2021 In a bench conviction of cruelty against a companion animal, R.C. 959.131(B), appellant was not denied his federal and state right to confront witnesses against him where one witness testified through remote technology since appellant had the opportunity to observe and cross-examine witness, and the trial court properly relied on a judicial administrative order to limit in-person appearances due to the COVID-19 pandemic, Fleegle; moreover, any error was harmless in light of the other eyewitness testimony presented at trial.

Search. State v. Taylor, 2021-Ohio-4338 | 2nd Appellate District | 12/10/2021 In an appeal by the state of grant of motion to suppress in prosecution of weapon offenses, investigating officers had a reasonable suspicion of criminal activity during a Terry stop where dispatched to a fitness facility on a report of a "disorderly subject" who "refused to leave," and the facility requested defendant be trespassed, leading to his providing identification and discovery by officers that he had an arrest warrant, and the search incident to the arrest led to the discovery of the weapon and ammunition in his bag.

Ineffective assistance. State v. Wilcoxson, 2021-Ohio-4339 | 2nd Appellate District | 12/10/2021 In a bench conviction of aggravated menacing, the defense counsel did not provide ineffective assistance by not filing a motion for continuance or a jury demand since those decisions are matters of trial tactics and strategy, and appellant failed to demonstrate prejudice, especially in light of appellant's admissions of verbally threatening one of the victims and telling police that he was a violent person.

Endangering children. State v. Wiggins, 2021-Ohio-4554 | 7th Appellate District | 12/10/2021 Bench conviction of endangering children, R.C. 2919.22(A), was not against the weight of evidence where appellant left two minor children in her car while she went on a boat trip with two of her children and, although she claimed that she asked a person at the boat ramp to watch the children, officers testified

that when they arrived, no one but the children were there, and another officer testified to dangers the children could have encountered, including that the vehicle was parked close to the lake and the area was known to have many cases involving sexual misconduct, and credibility determinations were for the trier of fact.

Post-conviction relief. State v. McCain, 2021-Ohio-4337 | 2nd Appellate District | 12/10/2021 Following a 2004 conviction by plea of murder and aggravated robbery that was not appealed, denial of 2013 petition for post-conviction relief as untimely filed and grant in part of 2014 of motion vacating erroneous imposition of post-release control for the aggravated robbery conviction, the trial court did not err in denying pro se 2021 post-conviction relief petition as untimely filed that did not meet the R.C. 2953.23(A) requirements for the filing of an untimely petition, and appellant's claims are also barred by res judicata.

Suppression. State v. Haas, 2021-Ohio-4346 | 6th Appellate District | 12/10/2021 In a conviction of county employee by plea of unauthorized use of computer, cable or telecommunication property, R.C. 2913.04(B), denial of motion to suppress was not error where there was no express threat, oral or written, of discharge of appellant in the investigation of unauthorized use of government information that would warrant a subjective belief by her that she would be terminated if she did not cooperate with an investigation or answer questions, Graham.

Appeal. State v. Johnson, 2021-Ohio-4344 | 6th Appellate District | 12/10/2021 In a conviction by plea of, inter alia, involuntary manslaughter, the court of appeals dismisses pro se appeal involving a companion case since untimely filed, App.R. 4(A), and since appellant was not a party to that case, he does not have standing to appeal the orders filed in that case.

Attempted murder. State v. Hinton, 2021-Ohio-4367 | 3rd Appellate District | 12/13/2021 Conviction of, inter alia, attempted murder met the sufficiency and weight of evidence standards where a bar employee saw appellant having a verbal altercation with the victim immediately prior to the shooting, appellant had one hand raised and one hand by his side just before the gunshots were heard, and the bar employee testified the gunshots came from directly in front of him where appellant was standing and facing victim, bar employee recognized the shooter and identified him in a photo array.

Reopening. State v. Wachee, 2021-Ohio-4427 | 8th Appellate District | 12/13/2021 Pro se application to re-open appeal, App.R. 26(B), is dismissed where appellant's allegation that appellate counsel provided ineffective representation was not supported by anything in the record on appeal, appellant did not provide any argument concerning his claims that the indictment was defective and that his speedy trial rights were violated, App.R. 26(B)(2)(c), and he failed to include the required affidavit with his application, App.R. 26(B)(2)(d).

Ineffective assistance. State v. Holbrook, 2021-Ohio-4362 | 3rd Appellate District | 12/13/2021 In a conviction by plea of drug offenses, defense counsel provided ineffective assistance by not filing an affidavit of indigency to avoid the imposition of mandatory fines since appellant and the state agree that if an affidavit had been filed in this matter, there was a reasonable probability the trial court would have found him indigent, he had been found indigent multiple times in this case, and his affidavits of indigence showed no income and no assets, R.C. 2929.18(B)(1).

Appeal. State v. Morrison, 2021-Ohio-4371 | 3rd Appellate District | 12/13/2021 In a conviction by plea of burglary, pro se appeal is dismissed, sua sponte, as untimely filed, App.R. 4(A)(1), and appellant has not sought leave to appeal under App.R. 5(A).

Self-defense. State v. Hodgson, 2021-Ohio-4374 | 11th Appellate District | 12/13/2021 In a conviction of six counts of felonious assault, arising out of appellant's injuring four persons at a homeless encampment that he and persons injured were staying, the state presented sufficient evidence from which a jury could find beyond a reasonable doubt that appellant did not act in self-defense since evidence was presented that appellant was at fault in creating the situation that led to the affray, he could have retreated instead of using force, and he used more force than was reasonably necessary to repel any attack by unarmed persons, R.C. 2901.05(B)(1).

Appeal. State v. Kelsey, 2021-Ohio-4372 | 11th Appellate District | 12/13/2021 In a conviction by plea of burglary, pro se appeal is dismissed, sua sponte, as untimely filed, App.R. 4(A)(1), and appellant has not sought leave to appeal under App.R. 5(A).

Post-conviction relief. State v. Costell, 2021-Ohio-4363 | 3rd Appellate District | 12/13/2021 Following a 2015 conviction of, inter alia, aggravated murder that was affirmed, denial of petition for post-conviction relief was not error where claim of ineffective assistance of counsel is without merit since appellant failed to identify any grounds that a Daubert challenge to exclude the testimony of state's medical experts would have been successful, and appellant did not demonstrate counsel failed to consult with appropriate experts or to investigate the medical evidence, and not calling expert witnesses at trial is a matter of debatable trial tactics.

Violation of a civil stalking protection order. State v. Cephas, 2021-Ohio-4356 | 12th Appellate District | 12/13/2021 Bench conviction of violating a civil stalking protection order, R.C. 2919.27(A)(2), was not against the weight of evidence where, in light of conflicting evidence presented by the parties, the trial court found that state's evidence presented in support of its charge of appellant's conduct in using her vehicle to charge the protected person constituted a reckless violation of the order, and the trial court did not lose its way in making its credibility determinations.

Competency. State v. Powers, 2021-Ohio-4357 | 12th Appellate District | 12/13/2021 In a conviction of first-degree misdemeanor assault, the trial court did not fail by not, sua sponte, conducting a competency hearing or order a psychological assessment of appellant where appellant's interactions with the trial court demonstrate he understood the nature and objective of the proceedings against him and that he was capable of assisting in his own defense, and the fact that he had a history of drug abuse did not render him incompetent to stand trial.

Ineffective assistance. State v. Moore, 2021-Ohio-4414 | 4th Appellate District | 12/14/2021 In a conviction of domestic violence of defendant's granddaughter and residential guardian, R.C. 2919.25(A), defense counsel did not provide ineffective assistance

where claims concern trial strategy of discrediting the testimony of the state's witnesses, nor did counsel make a concession of appellant's guilt through any statements that counsel made.

Post-conviction relief. State v. Montgomery, 2021-Ohio-4396 | 5th Appellate District | 12/14/2021 In a 2018 conviction by plea of felonious assault and weapon offenses and imposition of concurrent and consecutive prison sentences of eight years, denial of 2020 "Motion to Correct Void Sentence Pursuant to R.C. 2953.21 and 2941.25" was not error since appellant did not file a direct appeal, and the claimed error, if it existed, would have resulted in a voidable sentencing error that should have been raised in a direct appeal, not by a petition for post-conviction relief, and thus claim is barred by res judicata.

Post-conviction relief. State v. Culbertson, 2021-Ohio-4415 | 5th Appellate District | 12/15/2021 Following a 2018 conviction of aggravated robbery, R.C. 2911.01(A)(1), that was affirmed, denial of 2020 petition of post-conviction relief as untimely filed was not error since the date of the filing of the trial transcript, not the later date of the filing of the exhibits from the bindover hearing in the juvenile court proceedings to the trial court, was the correct date to be used in determining when the "transcript of the proceedings" was filed.

New trial. State v. Smith, 2021-Ohio-4388 | 1st Appellate District | 12/15/2021 In a conviction of. inter alia, aggravated robbery, aggravated burglary and weapon offenses that was affirmed, denial of pre-sentence pro se Crim.R. 33 motion for new trial that was amended a year later was not error where, at the time appellant filed his pro se motion, he was represented by counsel who did not join in the motion, and thus the motion was a nullity and, since it was a nullity, the amended motion was also a nullity and, moreover, the subsequent motion was not timely filed and appellant did not seek leave nor was it warranted.

Identification. State v. Hopkins, 2021-Ohio-4632 | 7th Appellate District | 12/15/2021 In a conviction of murder, denial of motion to suppress photo identification of appellant was not error since the identification procedure used by police was not improperly suggestive and the identification was not unreliable where officer had shown witness a photograph of defendant after she had named and described him, stating that she knew him for some time, that he was present with her at a gathering shortly before the shooting and the length of time between the event and the identification was short.

Appeal. Cleveland v. Sabetta, 2021-Ohio-4426 | 8th Appellate District | 12/16/2021 Following a 2019 conviction by plea of an amended charge of attempted violation of a protection order and imposition of active community control, including supervised visitation of appellant's and protected person's daughter at a specified facility, appeal of denial of 2020 motion to modify supervised visitation order is barred by res judicata because appellant is attempting to bootstrap a claim that is time barred since he should have timely appealed the 2019 order in order to challenge the imposition of the supervised visitation provision, App.R. 4(A).

Reconsideration/Sealing. State v. A.G., 2021-Ohio-4428 | 8th Appellate District | 12/16/2021 In state's application for reconsideration, App.R. 26(A)(1)(a), in which the state argues the court of appeals made an error in its legal analysis yet agrees with the court's decision, is granted and a new opinion is issued that the applicant for sealing of conviction is not an eligible offender under R.C. 2953.31(A)(1) since the applicant was convicted of attempted intimidation, R.C. 2921.04, that is an offense of violence not included in the R.C. 2953.36 list of exceptions.

Plea. Parma v. Hardimon, 2021-Ohio-4430 | 8th Appellate District | 12/16/2021 In a municipal court conviction of misdemeanor assault and criminal damaging, magistrate's order accepting appellant's plea did not conform to Crim.R. 19(D)(3)(a)(iii) requirements by failing to include a notice of the effect of a party's failure to file objections with the trial court, the trial court also erred by failing to hold a hearing on appellant's pre-sentence motion to vacate plea; convictions are vacated and matter is remanded to permit appellant to file objections to magistrate's decision and for the court to conduct a hearing on appellant's pre-sentence motion to vacate plea.

New trial. State v. Thompson, 2021-Ohio-4431 | 8th Appellate District | 12/16/2021 Following a 2000 conviction of two counts of rape, R.C. 2907.02, of appellant's seven year-old son that was affirmed, denial of 2020 motion for leave to file a delayed motion for a new trial was error where appellant was unavoidably prevented from discovering evidence that he did not molest the son since appellant has been in jail since 2000 and son's affidavit of materiality was not filed until 2020 and contained information not in the trial record, Crim.R. 33(A)(6).

Evidence. State v. Marshall, 2021-Ohio-4434 | 8th Appellate District | 12/16/2021 In a conviction of, inter alia, multiple counts of rape of a minor under 13 years-old, R.C. 2907.02(A)(1)(b), admission of other acts evidence of defendant's sexual activity by victim's aunt with which he had been in a relationship was error since that evidence did not demonstrate that the modus operandi or plan was material, Evid.R. 404(B), R.C. 2945.59 and R.C. 2907.02(D), but error was harmless since, after removal of the offending testimony, there was overwhelming evidence of defendant's guilt.

Post-conviction relief. State v. Buehner, 2021-Ohio-4435 | 8th Appellate District | 12/16/2021 Following a 2002 conviction of two counts of murder that was affirmed, a 2019 denial of motion for leave to file a motion for new trial and petition for post-conviction relief was error where appellant's constitutional right to due process was violated by the state's failure to produce the exculpatory statements of persons who claimed to have seen the shooting of the victim since a reasonable probability exists that the jury would have reached a different decision if the exculpatory evidence had been known at trial, Brady.

Drug possession. State v. Walker, 2021-Ohio-4489 | 4th Appellate District | 12/16/2021 Conviction of possession of heroin met the sufficiency and weight of evidence standards where officers entered a residence known to be a drug-trafficking house, defendant was found in a small upstairs bathroom, appellant was in the bathroom within a couple of feet of a clear bag of heroin in plain view found in the uncovered toilet, appellant had $1,300 in cash and two cellphones in his possession, and the jury did not lose its way in making its credibility findings.

Evidence. State v. Love, 2021-Ohio-4451 | 10th Appellate District | 12/16/2021 In a conviction of possession and aggravated possession of drugs, admission of other acts evidence,

Evid.R. 404(B), was not unfairly prejudicial, Evid.R. 403, since the trial court limiting instruction allowed the jury to consider the evidence for the singular purpose of placing the events of the day that police executed the search warrant of the residence of defendant's father where defendant was residing as the culmination of approximately two months of surveillance.

Sealing. State v. S.R., 2021-Ohio-4458 | 10th Appellate District | 12/16/2021 Grant of application to seal record of prior conviction of first-degree misdemeanor Medicaid fraud, R.C. 2913.40(B), was error because applicant was not an eligible offender under R.C. 2953.32(A) since she failed to fully pay the restitution where, although the trial court modified the jail sentence that it had imposed for applicant when she failed to pay the full restitution amount, it had never modified the restitution requirement, and obligation to pay restitution does not expire due to passage of time, R.C. 2929.18(A)(1).

Competency. State v. Sowards, 2021-Ohio-4462 | 10th Appellate District | 12/16/2021 In two prosecutions against defendant in which he was referred to a behavioral center following a finding of incompetency, the trial court did not err in subsequently issuing a judgment ordering appellant to take all medications prescribed to him and to submit to all lab work or monitoring, and the court did not err in concluding that the proposed medication is substantially unlikely to have side effects that would undermine the fairness of a trial or that would interfere significantly with the defendant's ability to assist counsel in presenting a defense.

Evidence. State v. Morgan, 2021-Ohio-4443 | 5th Appellate District | 12/17/2021 In a conviction of, inter alia, attempted murder and menacing by stalking, the trial court did not violate Evid.R. 404(B) by admitting the state's power point presentation of the information obtained from defendant's and victim's cell phones since it was relevant to the charges where made to cause victim to believe defendant would harm himself because victim chose to end their relationship, nor did the court err by admitting the state's exhibit of defendant's Facebook account information since it was properly authenticated, Evid.R. 901(A).

Confrontation Clause/Hearsay. State v. Culler, 2021-Ohio-4642 | 7th Appellate District | 12/17/2021 In a conviction of sexual offenses, sexual assault examiner's testimony about what child victim told her about the incidents did not violate the prohibition against hearsay and the Confrontation Clause where the expert's opinion testimony on whether there was sexual abuse was admissible to aid the trial court as trier of fact in making its decision since the testimony was not given as an opinion concerning the child's veracity, but rather was based on observations of child's demeanor or other indicators tending to show the presence of sexual abuse, Evid.R. 702 and 704, and the statements were made for purposes of medical diagnosis or treatment, Evid.R. 803(4).

Recklessly failing to appear. Ohio v. Connin, 2021-Ohio-4445 | 6th Appellate District | 12/17/2021 Conviction of two counts of recklessly failing to appear for sentencing, R.C. 2937.29, on two occasions when appellant was released on his personal recognizance was not error where he was aware of the sentencing dates since the assistant court administrator mailed the sentencing hearing notice to his address and it was not returned as undeliverable, his attorney contacted and informed him of the hearing, and he admitted at the subsequent sentencing hearing he knew of the prior dates; also, the trial court did err in not ordering appointed-counsel fees by a separate entry.

Plea withdrawal. State v. Newsome, 2021-Ohio-4448 | 6th Appellate District | 12/17/2021 Following a 2013 conviction by plea of, inter alia, involuntary manslaughter, denial of a pro se 2021 successive motion to withdraw plea was not error where claim that appellant's involuntary manslaughter conviction was based on nolled charges that breached the plea agreement and violated his constitutional rights is without merit since claim is barred by res judicata because it could have been raised at trial.

Search. State v. Stewart, 2021-Ohio-4444 | 5th Appellate District | 12/17/2021 In a conviction by plea of heroin possession, R.C. 2925.11, denial of motion to suppress was not error where claim that search warrant of house that defendant resided in was not supported by probable cause because information was stale is without merit since the information related to ongoing drug activity, informant said he saw drugs in house about one month before warrant was issued, and drugs were found during traffic stop of person leaving house on the day before warrant was issued.

Speedy trial. State v. Williams, 2021-Ohio-4469 | 9th Appellate District | 12/20/2021 In an appeal by the state of grant of defendant's motion to dismiss indictment on speedy trial grounds, R.C. 2941.401, in a prosecution of, inter alia, aggravated robbery, the trial court erred since defendant failed to strictly comply with R.C. 2941.401 where he was incarcerated on other charges when charged in this case, and he failed to complete a proper written notice and request for final disposition pursuant to R.C. 2941.401 since, although he sent written notice to the trial court, he failed to show that he sent written notice of availability to the prosecutor, McGowan.

Plea withdrawal. State v. Garcia, 2021-Ohio-4480 | 11th Appellate District | 12/20/2021 In a conviction by plea of multiple counts of compelling prostitution and sexual imposition, the trial court did not err by denying appellant's pre-sentence motion to withdraw his plea that he claims was the product of fear and panic regarding the prospect of a lengthy prison sentence, doubts about receiving a fair trial and the possibility of contracting COVID if incarcerated since, even if his fears and panic were justifiable, they did not render his plea involuntary where no claim of incompetency was made or how diagnoses of depression and anxiety prevented him from understanding what he was doing by pleading guilty.

Theft. State v. Love, 2021-Ohio-4470 | 3rd Appellate District | 12/20/2021 Bench conviction of theft, R.C. 2913.02(A)(2), met the sufficiency and weight of evidence standards where the evidence was undisputed that appellant had moved into a fully furnished residence and left with the mattress and numerous kitchen items that were not hers and only returned some of the items when contacted repeatedly by police, and the trial court found her explanation that "neighborhoods kids," whom she claimed she asked to help her move after she had car problems, obtained the property that was not hers was not a credible explanation of why she kept the property.

Plea. State v. Castro, 2021-Ohio-4476 | 3rd Appellate District | 12/20/2021 In a conviction by plea of no contest

to sexual battery, R.C. 2907.03(A)(3) and (B), plea was validly made by non-English speaking defendant provided with a certified interpreter and court-appointed counsel, where the trial court gave appellant an opportunity to speak to his counsel each time he demonstrated confusion about plea and, at the change of plea hearing, he showed no confusion because he understood a plea of no contest to mean that he was not admitting guilt, but rather an admission of the truth of the facts alleged in the indictment.

Post-conviction relief. State v. Porter, 2021-Ohio-4630 | 7th Appellate District | 12/20/2021 Following bindover of juvenile and conviction by plea of rape, R.C. 2907.02(A)(1)(c), and dismissal of appeal, denial of motion, treated as a petition for post-conviction relief, was error where the trial court dismissed the petition without findings of fact and conclusions of law since petition was timely filed pursuant to R.C. 2953.21(A)(2)(a) when taking into consideration the COVID-19 tolling provisions, H.B. 197, Sec. 22(A).

Reopening. State v. Williams, 2021-Ohio-4523 | 8th Appellate District | 12/20/2021 Pro se application to re-open appeal, App.R. 26(B), was not error where application was untimely filed, App.R. 26(B)(1) and (2)(b), and applicant failed to show good cause for the delay in filing since claims that appellate counsel failed to provide applicant with a copy of the appellate opinion and that the COVID pandemic caused him to have inadequate access to the prison's library and legal resources do not establish good cause.

Mandamus/Prohibition. State ex rel. Ogle v. Hocking Cty. Common Pleas Court, 2021-Ohio-4453 | Supreme Court of Ohio | 12/21/2021 After defendant-appellant, represented by counsel, was convicted of assaulting a peace officer, placed under house arrest prior to sentencing, released on a recognizance bond with a condition she not contact any lawyer and later sentenced while unrepresented, the court of appeals' dismissal of appellant's petition for writ of mandamus to void her sentence was error since it stated a colorable claim that the trial judge violated appellant's Sixth Amendment right to counsel at sentencing where the judge proceeded under the belief that appellant waived her right to counsel; dismissal of appellant's petition for writ of prohibition for disqualification of attorney representing respondents was not error because there was no conflict of interest since attorney never represented appellant.

Judicial release. State v. Thompson, 2021-Ohio-4491 | 10th Appellate District | 12/21/2021 Following a 2010 conviction of theft-related offenses and imposition of concurrent and consecutive prison and community control sentences plus restitution, and a 2015 grant of motion for judicial release, the trial court did not err in revoking appellant's judicial release community control due to appellant's failure to pay restitution since the evidence demonstrated that appellant willfully or intentionally failed to pay restitution by not making a bona fide effort.

Evidence. State v. C.D.S., 2021-Ohio-4492 | 10th Appellate District | 12/21/2021 In a conviction of kidnapping, R.C. 2905.01, and five counts of rape of a minor, R.C. 2907.02, the trial court did not admit other acts evidence violative of Evid.R. 404(B) and R.C. 2945.59 since video of forensic interview of a victim by a licensed social worker and forensic interviewer was redacted to eliminate potentially prejudicial statements toward appellant, and a video was provided in discovery so appellant could have questioned the victim about the video at that time.

Evidence. State v. Adbuleh, 2021-Ohio-4495 | 10th Appellate District | 12/21/2021 In a prosecution of, inter alia, aggravated burglary, the trial court did not err by finding appellant a mentally ill person subject to court-ordered institutionalization, R.C. 2945.39(D)(1), since admission of video of police interview of alleged victim as a recorded recollection was proper under Evid.R. 803(5) where, although that person claimed he no longer could recall the alleged event, he testified that he told police in the recorded interview what happened during the incident with appellant.

Marsy's Law. State v. Beach, 2021-Ohio-4497 | 10th Appellate District | 12/21/2021 In defendant's conviction of assault and trial court's grant of restitution to victim in the amount of $13,714.94, but the trial court denied victim's request for blood testing of defendant based on its statutory interpretation of R.C. 2907.27, the court of appeals holds that victim had standing to appeal the trial court's failure to address her argument that she was entitled to a blood test of defendant under Marsy's Law, Ohio Const., Art. 1, Sec. 10a, but since the trial court failed to address whether victim was entitled to blood testing under Marsy's Law, action is remanded for further review.

Ineffective assistance. State v. Silver, 2021-Ohio-4661 | 7th Appellate District | 12/22/2021 In a conviction by plea of, inter alia, aggravated burglary and felonious assault, defense counsel did not provide ineffective assistance by not seeking dismissal of the aggravated burglary charge and by failing to present letters of support at sentencing to mitigate the overall sentence where appellant failed to establish that the advice he received from counsel affected the voluntary, knowing or intelligent nature of his guilty plea since the trial judge's Crim 11 colloquy demonstrates that the plea was validly made.

Post-conviction relief. State v. Tapscott, 2021-Ohio-4662 | 7th Appellate District | 12/22/2021 Following a 2012 conviction of, inter alia, two counts of aggravated robbery that was affirmed after remand for re-sentencing, denial of pro se "Motion for Void Sentence" and a "Motion for Summary Judgment," treated as a petition for post-conviction relief, was not error since claim that the state's election not to merge the two counts of aggravated robbery as allied offenses for sentencing pursuant to R.C. 2941.25 was error because the offenses should have been merged is without merit since petition was untimely filed, R.C. 2953.21(A)(2)(a), and appellant failed to demonstrate that the R.C. 2953.23 exceptions to the time requirement applied.

Search. State v. Grabe, 2021-Ohio-4666 | 7th Appellate District | 12/22/2021 In an appeal by the state of grant of motion to suppress in a drug and weapon prosecution, the trial court erred in granting the motion since officers had probable cause to believe a criminal offense had occurred when, in plain sight, they observed part of a firearm protruding from underneath the front passenger seat of the vehicle defendant was driving in violation of R.C. 2923.16(C), providing probable cause for the arrest, notwithstanding that they mistakenly believed that a loaded weapon was required for the offense.

Arrest warrant. State v. Harrison, 2021-Ohio-4465 | Supreme Court of Ohio | 12/22/2021 In an appeal involving the validity of an unsigned arrest warrant in a prosecution of, inter alia, felony drug offenses, the Ohio Supreme Court holds that an unsigned arrest warrant is not a violation of the Fourth Amendment to the U.S. Constitution since by its terms no signature on the warrant is required, and the warrant was valid under Ohio law since it contained all the elements that Crim.R. 4(A)(1) and (C)(1) prescribe, and the surrounding circumstances show that the trial judge's affirmative documentation on the complaint that probable cause was found sufficed to confirm that the trial court issued the arrest warrant based on that finding.

Prosecutorial misconduct. State v. Loyd, 2021-Ohio-4508 | 6th Appellate District | 12/22/2021 In a conviction of felonious assault, the trial court erred by failing to grant defendant's motion for mistrial where prosecutor during cross-examination of defendant indicated that there were other witnesses' statements corroborating a witness statement supporting victim's version of events and, although the judge sustained defendant's objection and gave a curative instruction to the jury, before the jury retired, a juror asked whether there were any other witnesses to corroborate the state's witness statement agreeing with the victim's version, but the trial court failed to renew its instruction to disregard the state's previously-stricken question, denying defendant's right to a fair trial.

Intervention in lieu of conviction. State v. Hempfield, 2021-Ohio-4528 | 5th Appellate District | 12/22/2021 In a conviction by plea of aggravated drug possession, denial of motion in lieu of intervention, R.C. 2951.041, was not error where the trial court found appellant was not amenable to intervention in lieu of conviction because, as stated in the presentence investigation report, appellant had tested positive and failed to report many times, her criminal record, and her failure to comply with bond conditions, including testing positive repeatedly for marijuana and methamphetamines and her failure to report for random drug tests and appointments on a number of occasions.

Private citizen affidavit. In re Affidavit by Accusation, 2021-Ohio-4502 | 2nd Appellate District | 12/22/2021 In inmate's "Affidavit by Accusation Criminal Complaint" for the initiation of criminal charges for perjury, evidence tampering, obstructing justice and falsification against an officer who testified in inmate's trial that resulted in inmate's conviction, although the trial court did not err in refusing to issue an arrest warrant for a misdemeanor, R.C. 2935.10(B), it did err by not referring the matter to the county prosecutor for investigation of a felony as required by R.C. 2935.10(A).

Private citizen affidavit. In re Affidavit by Accusation, 2021-Ohio-4503 | 2nd Appellate District | 12/22/2021 In inmate's "Affidavit by Accusation Criminal Complaint" for the initiation of criminal charges against his former wife, the trial court did not err by declining to issue a warrant for appellant's former wife's arrest or to refer the matter to the county prosecutor for investigation pursuant to R.C. 2935.10(A) and (B) since the trial court had previously declined to issue a misdemeanor arrest warrant and the prosecutor declined to pursue any charges, and thus res judicata applies to bar appellant from raising essentially the same allegations in successive affidavits.

Appeal. State v. Lindsay, 2021-Ohio-4526 | 5th Appellate District | 12/22/2021 Following a 2010 conviction of, inter alia, rape of a ten year-old female that was affirmed, and denial of multiple post-conviction motions, denial of 2021 pro se successive appeal of motion challenging the sentence imposed was not error since barred by res judicata because appellant's arguments were raised or could have been raised in his direct appeal or by appeal of the denial of his subsequent motions for post-conviction relief.

Drug trafficking. State v. Barnes, 2021-Ohio-4527 | 5th Appellate District | 12/22/2021 Conviction of drug trafficking offenses was not against the weight of evidence where challenge to the credibility of the state's witness is without merit since none of the background and circumstances of the informant were hidden from the jury, and informant's testimony was corroborated by audio and video recordings of each of the buys, the observations of officers during each buy, and officers testified that the informant entered each buy with cash and no drugs on his person, and exited with drugs and no cash.

Dismissal. State v. Misch, 2021-Ohio-4477 | Supreme Court of Ohio | 12/22/2021 Cause is dismissed as having been improvidently accepted.

Violent Offender Registry. State v. Hutchins, 2021-Ohio-4524 | 8th Appellate District | 12/23/2021 In a conviction by plea in three consolidated cases of multiple felonies, judgment is affirmed since the challenge to constitutionality of the Sierah's Law provisions requiring registration as a sex offender in a Violent Offender Registry, R.C. 2903.43(F)(2), as violating the United States and Ohio constitutional provisions against imposition of retroactive and ex post facto laws is without merit in light of the Ohio Supreme Court opinions in Hubbard and Jarvis upholding the constitutionality of Sierah's Law.

Plea. State v. Stevens, 2022-Ohio-2 | 7th Appellate District | 12/23/2021 In a conviction by plea of, inter alia, murder, the trial court did not err in permitting appellant to withdraw his prior not guilty by reason of insanity plea since the defense is withdrawn by entering a guilty or no contest plea and, although Crim. R. 11 does not require a court to engage in a colloquy for the withdrawal of a not guilty by reason of sanity plea, the court conducted a thorough plea colloquy, and appellant made repeated affirmances that he understood the proceedings and the consequences of pleading guilty.

Evidence. State v. Sherman, 2021-Ohio-4532 | 10th Appellate District | 12/23/2021 In a conviction of, inter alia, attempted burglary and aggravated arson, the trial court did not err in admitting a letter that defendant attempted to write to another person while defendant was in jail awaiting trial that included requests to shoot his former girlfriend since letter contained relevant evidence on defendant as the perpetrator of the offenses and on his consciousness of guilt, Evid.R. 401, and the trial court provided a limiting instruction that mitigated any danger that the jury would unfairly consider the letter as proof of defendant's bad character or that he acted in accordance with it.

New trial. State v. Hawk, 2021-Ohio-4533 | 10th Appellate District | 12/23/2021 Following a 2012 conviction of, inter alia, attempted murder that was affirmed, denial of 2021 pro se motion to void judgment and for leave to file a delayed motion for new trial was not

error since appellant previously filed a direct appeal and a prior motion for new trial, and a successive motion for leave to file a delayed motion for new trial is barred by res judicata.

Plea withdrawal. State v. Hughes, 2021-Ohio-4534 | 10th Appellate District | 12/23/2021 In a conviction by plea of, inter alia, aggravated murder following bindover from juvenile court that was affirmed, denial of pro se post-conviction Crim.R. 32.1 motion to withdraw plea was not error where claim that plea was coerced is barred by res judicata since appellant could have raised claim on direct appeal, and his self-serving claim that he was improperly forced into pleading guilty is not supported by the record since he stated his lawyers were not "twisting [his] arm," and that no one pressured him into pleading guilty.

Evidence. State v. Jeter, 2021-Ohio-4658 | 7th Appellate District | 12/27/2021 In a conviction of felonious assault, R.C. 2941.145, admission of officer's cell phone video of surveillance footage of the shooting at a bar was not plain error where officer who made the cell phone video and his supervisor testified that the video presented at the trial mirrored the video taken from the cell phone of the surveillance footage, it had not been altered in any way and the original was no longer available, and thus the cell phone video was admissible as a duplicate, Evid.R. 1001(4) and 1003.

Post-conviction relief. State v. Kaufhold, 2021-Ohio-4539 | 12th Appellate District | 12/27/2021 Following a conviction of rape and sexual battery that was affirmed, denial of petition for post-conviction relief without a hearing was not error since barred by res judicata where appellant could have raised his claim of ineffective assistance of trial counsel on direct appeal, but did not, and affidavit of defense counsel stating that he did not consult with a SANE nurse or a doctor did not demonstrate that counsel did not consider those options nor did appellant demonstrate that an expert witness' testimony would have supported his position.

Plea. State v. Murphy, 2021-Ohio-4541 | 12th Appellate District | 12/27/2021 In a conviction by plea of aggravated arson, plea was validly made since the trial court complied with Crim.R. 11(C) where, inter alia, the record demonstrates that the nature of the aggravated arson charge had been explained to appellant and that he understood the charge, and a detailed recitation of the elements of the charge was not required in light of appellant's guilty plea.

Sexual offender registration. State v. Kirchgessner, 2021-Ohio-4542 | 12th Appellate District | 12/27/2021 In a conviction of fourth-degree misdemeanor attempted sexual imposition, R.C. 2923.02(A) and 2907.06(A)(4), classification of appellant as a Tier I sexual offender was not error since R.C. 2950.01(E)(1)(a) and (E)(1)(h) include any "sex offender" who is convicted of the crime of attempted sexual imposition, a "sexually-oriented offense" as defined by R.C. 2950.01(A)(1) and (A)(14) and a person who is a Tier I sex offender is required by R.C. 2950.07(B)(3) to register as a "sex offender" every year for a period of 15 years.

Plea. State v. Baker, 2021-Ohio-4544 | 12th Appellate District | 12/27/2021 In a conviction by plea of attempted murder, imposition of minimum mandatory prison term of ten years with a maximum mandatory prison term of 15 years pursuant to Sierah's Law, plea was not invalid where the trial court did not inform appellant of the R.C. 2903.42(A)(1)(a) registration and notification requirements under the violent offender database before accepting appellant's guilty plea since those requirements are not included in the maximum penalty of an offense and thus are not part of Crim.R. 11 colloquy.

Search. State v. Hommes, 2021-Ohio-4568 | 11th Appellate District | 12/27/2021 In a prosecution of, inter alia, drug offenses, the trial court erred in granting a motion to suppress evidence seized from defendant's house by police following a call from a fire inspector immediately after the extinguishment of a house fire in which the inspector was determining the cause and origin of a fire and observed drugs in plain view and called police, and the warrantless seizure of drugs from the house by police was supported by exigent circumstances and was also in plain view.

Plea withdrawal. State v. Good, 2021-Ohio-4560 | 3rd Appellate District | 12/27/2021 Following a 2017 conviction by plea of multiple counts of rape of minors and imposition of jointly-recommended aggregate prison sentence of 25 years to life, denial of 2020 Crim.R. 32.1 motion to withdraw plea was not error since the trial court substantially complied with Crim.R. 11(C)(2) by apprising appellant of the maximum sentence, and failure to correctly apprise him of the minimum sentence does not affect the sufficiency of the Crim.R. 11 plea colloquy, nor was defendant prejudiced since his sentence was less than the actual potential maximum and within the range stated by the trial court.

Appeal. State v. Coppa, 2021-Ohio-4569 | 11th Appellate District | 12/27/2021 Following a conviction by plea of aggravated possession of drugs and imposition of community control, appellant was found in violation of community control and sentenced to the reserved 12-month prison sentence, claim on appeal that appellant was denied allocution at the community control violation hearing is moot since appellant had already served the 12-month prison sentence for the community control violation.

Limitations. State v. Baldwin, 2021-Ohio-4566 | 3rd Appellate District | 12/27/2021 In a prosecution of felony and misdemeanor charges arising out of appellant's alleged dog rescue and training operations, the trial court's grant of defendant's motion to dismiss misdemeanor charges based on the running of the statute of limitations was not error since indictment for those charges was filed outside of applicable statute of limitations, and limitations period was not tolled since defendant was not engaged in a continuing course of criminal conduct, the corpora delicti were discovered at a point more than two years before the state issued an indictment, and the defendant did not flee the state to avoid prosecution, R.C. 2901.13.

Drug offenses. State v. Gross, 2021-Ohio-4546 | 12th Appellate District | 12/27/2021 In a drug prosecution, the trial court did not err in ordering the state to reweigh drugs in the presence of defendant's laboratory analyst as required by R.C. 2925.51(F).

Ineffective assistance. State v. Watts, 2021-Ohio-4548 | 12th Appellate District | 12/27/2021 In a conviction of aggravated possession of drugs, defense counsel did not provide ineffective assistance by not requesting the trial court to waive court costs at the sentencing hearing because a counsel's decision not to request a waiver of court

costs at sentencing and postpone it until later is a matter of trial strategy since the request for waiver can be made at any time, and also appellant failed to demonstrate prejudice since, even though he had been found indigent, the record demonstrated he had the ability to work and earn an income to pay the costs.

Dismissal. State v. Lowe, 2021-Ohio-4563 | 3rd Appellate District | 12/27/2021 In an appeal by the state of dismissal of indictment charging defendant with 12 counts of gross sexual imposition, the trial court erred in holding the state collaterally estopped from prosecuting defendant for criminal offenses based on a juvenile court determination in an abuse and dependency status proceeding since the adjudicatory phase of the abuse and dependency case did not involve a finding of parental fault, nor did it implicate a potential punishment of defendant.

Plea. State v. Champelle, 2021-Ohio-4572 | 5th Appellate District | 12/27/2021 In a conviction by plea of three counts of burglary, R.C. 2911.12(A)(1), the trial court's imposition of a sentence greater than the prosecution recommended was not error where the court complied with Crim.R. 11 by informing defendant that the state's sentencing recommendation was not binding on it, and thus defendant's plea was knowingly and voluntarily given.

Plea. State v. Summit, 2021-Ohio-4562 | 3rd Appellate District | 12/27/2021 In a conviction by plea of, inter alia, aggravated vehicular homicide and OVI, plea was validly made where the trial court strictly complied with the notifications required by Crim.R. 11(C)(2)(c) and substantially complied with the notifications required by Crim.R. 11(C)(2)(a) and (b) when accepting appellant's guilty pleas for her felony-level offenses.

Plea withdrawal. State v. Longworth, 2021-Ohio-4538 | 12th Appellate District | 12/27/2021 In a conviction by plea of attempted assault, denial of motion to withdraw plea was error where appellant relied on his two former attorneys' misadvice that a guilty plea to a reduced charge of second-degree misdemeanor attempted assault would not subject him to the federal firearms disability imposed under 18 U.S.C. 922(g)(9).

Recusal. State v. Guildoo, 2021-Ohio-4553 | 7th Appellate District | 12/27/2021 In a bench conviction of, inter alia, criminal trespass, the trial judge did not err by denying appellant's oral motion to recuse due to impartiality based on appellant's claimed over 50 appearances before the judge since appellant failed to file an affidavit of disqualification with the clerk of the Ohio Supreme Court, he forfeited his complaint on appeal, Rhoades.

Ineffective assistance. State v. Harris, 2021-Ohio-4559 | 3rd Appellate District | 12/27/2021 In a bench conviction of possession of drug paraphernalia, R.C. 2925.14(C), defendant did not receive ineffective assistance of counsel in not filing a motion to suppress evidence arising from the traffic stop that resulted in the charged offense where claim that officer's dash cam showed that defendant made a full stop at a red traffic light before turning right, but dash cam was not made part of the record and, moreover, stop was validly made where officer also stopped defendant because vehicle's license plate did not match the description of the vehicle's registration.

Post-conviction relief. State v. Rognon, 2021-Ohio-4564 | 3rd Appellate District | 12/27/2021 Following a 2019 conviction by plea of two counts of gross sexual imposition that was affirmed, denial of 2021 "Motion to Vacate Void Sentence" was not error since it is an untimely petition for post-conviction relief and barred by res judicata because claim that the trial court allegedly disregarded the applicable statute when it pronounced a mandatory sentence is without merit since, even if true, it is not jurisdictional so as to be capable of rendering conviction and sentence void, Turner, and the claim is also barred by res judicata since the claim could have been raised on direct appeal.

Violent offender registration. State v. Mason, 2021-Ohio-4571 | 11th Appellate District | 12/27/2021 Following a 1975 conviction of aggravated robbery and aggravated murder and imposition of a prison term of 27 years to life, the trial court erred in dismissal for lack of jurisdiction of appellant's motion to be excused from the registration requirements of Sierah's Law because since the trial court has jurisdiction over subject matter and over the person, it has jurisdiction to rule on appellant's motion; in light of the Ohio Supreme Court's decision in Hubbard holding Sierah's Law does not violate Ohio's prohibition on retroactive statutes, cause is remanded to enter judgment in accordance with Hubbard.

Law of the case. State v. Williams, 2021-Ohio-4664 | 7th Appellate District | 12/27/2021 In a conviction of OVI on remand, the trial court erred by allowing witness testimony based on evidence that was ordered by the court of appeals to be suppressed in prior appeal of conviction since, without this evidence, insufficient evidence existed to support a conviction; remanded to allow the state to determine if sufficient evidence remains to retry the case without utilizing any of the evidence suppressed.

Ineffective assistance. State v. Zhu, 2021-Ohio-4577 | 10th Appellate District | 12/28/2021 In a conviction of sexual imposition, R.C. 2907.06(A)(1), defense counsel did not provide ineffective assistance by: not requesting jury instructions on accident or mistake of fact since defendant denied making any sexual contact with the complainant; calling investigating officer as a witness "to establish that charges were not immediately filed" against defendant; and cross-examination of the complainant about a civil action against defendant that allowed rebuttal of implied improper motive.

Plea withdrawal. State v. Cochran, 2021-Ohio-4589 | 2nd Appellate District | 12/29/2021 Following a 2000 conviction by plea of, inter alia, murder that was not appealed, denial of 2020 motion to withdraw plea was not error where claim that application of Sierah's Law to appellant violates the Retroactivity Clause of Ohio Const. Art. II, Sec. 28 is without merit since the Ohio Supreme Court has held the retroactive application of Sierah's Law to conduct that which occurred prior to its effective date does not violate the Retroactivity Clause, Hubbard.

Drug trafficking/Corrupting another with drugs. State v. Jackson, 2021-Ohio-4619 | 6th Appellate District | 12/29/2021 Conviction of drug trafficking, R.C. 2925.03(A), and corrupting another with drugs, R.C. 2925.02(A), met the sufficiency and weight of evidence standards where the electronic messages on the drug purchaser's phone with appellant demonstrated that appellant sold drugs to a person who died from a drug overdose shortly after the person

purchased the drugs and a message also indicated appellant was aware he had provided an excessive amount of a drug.

Sexual predator classification. State v. Denike, 2021-Ohio-4580 | 1st Appellate District | 12/29/2021 Following a 2003 conviction by plea of rape and felonious assault and release from prison in 2018 on completion of prison sentence, appellant's subsequent classification as a sexual predator under Megan's Law version of former R.C. 2950.09(B) was error where the indictment contained sexually violent predator specifications, but the state dismissed those specifications pursuant to the plea bargain.

Witnesses. State v. Suggett, 2021-Ohio-4641 | 7th Appellate District | 12/29/2021 In a conviction by plea of first-degree child endangering by pleading guilty, appellant waived the right to challenge the trial court's finding that the alleged victim-minor child was competent to testify, Crim.R. 11(B)(1), and moreover, the trial court did hold a hearing to determine the child's competency and found the child competent to testify.

Restitution. State v. Miles, 2021-Ohio-4581 | 1st Appellate District | 12/29/2021 In a conviction by plea of theft, R.C. 2913.02, the trial court erred in imposing restitution of $5,000 where the trial court did not allow defendant a meaningful opportunity to challenge the state's evidence of the value of the stolen property at an evidentiary hearing by indicating that she would need to agree to the suggested restitution if she wanted to be placed on "probation" in lieu of serving jail time, and the court never affirmatively sentenced defendant to pay $5,000 in restitution in open court, but only in the sentencing entry.

Bail. Halloran v. Martin, 2022-Ohio-3 | 5th Appellate District | 12/30/2021 In a habeas corpus action in which relator claims $100,000 bond that the trial court set in criminal action for three charged first- and third-degree misdemeanors, writ is granted and bail is reduced to $10,000 where bail set by the trial court was excessive based on relator's financial resources, relator had consented to a protection order at his bail hearing and the trial court had ordered a Secure Continuous Remote Alcohol Monitor (SCRAM) system, reasonably assuring the relator's future appearance in court, Crim.R. 46(B).

Sexual battery. State v. Carnegie, 2021-Ohio-4597 | 9th Appellate District | 12/30/2021 Conviction of sexual battery, R.C. 2907.03(A)(2), met the sufficiency and weight of evidence standards since defendant, inter alia, admitted to officer during a recorded interview that he knew that victim was impaired when he engaged in sexual conduct with her, and there was additional evidence of the victim's impairment by other witnesses, including family members of defendant, and the jury did not lose its way in making its credibility determinations.

Evidence. State v. Ali, 2021-Ohio-4596 | 9th Appellate District | 12/30/2021 In a conviction of, inter alia, rape and kidnapping of 16 year-old great niece, the trial court did not err by the admission of other acts evidence of two other women who testified to have been previously assaulted by defendant, although the court of appeals expressed concern whether the other acts evidence was admissible under Crim.R. 404(B) on the grounds that the trial court instructed the jury, the court stated that, even assuming the other acts testimony was inadmissible, admission of the evidence was harmless since the remaining evidence established guilt beyond a reasonable doubt.

Post-conviction relief. State v. Brantley, 2021-Ohio-4621 | 9th Appellate District | 12/30/2021 Following a conviction of four counts of aggravated murder that was affirmed, denial of petition for post-conviction relief was not error since appellant did not demonstrate any reasonable likelihood that a witness' false testimony that he received no consideration from the state for his testimony implicating appellant in the murders affected jury's judgment to either appellant's underlying convictions or sentence imposed where the state's case included an overwhelming amount of circumstantial evidence against appellant that was independent from the witness' testimony.

Search. State v. Patterson, 2021-Ohio-4617 | 11th Appellate District | 12/30/2021 In a conviction by plea of aggravated drug possession, denial of motion to suppress was not error where officer had reasonable suspicion of a traffic violation and inventory search of vehicle resulting in the discovery of drugs was constitutional since made pursuant to a valid written law enforcement inventory policy, and officer was not required to wait while a person contacted by appellant could arrive to drive the vehicle after tow truck was already enroute and removal would be delayed.

Juror misconduct. State v. Wallace, 2021-Ohio-4612 | 8th Appellate District | 12/30/2021 In a conviction of, inter alia, rape and gross sexual imposition of minors, the trial court did not err by denying a motion for mistrial for a juror's misconduct in expressing his opinion in the presence of jurors that defendant was guilty where the trial court allowed counsel to question jurors about the impact of juror's statement, and jurors who heard statement responded they were not influenced by the statements and appellant did not request a limiting instruction, waiving any error on the issue.

Plea withdrawal. State v. Locke, 2021-Ohio-4609 | 8th Appellate District | 12/30/2021 In a conviction by plea of obstruction of official business, R.C. 2921.31, arising out of appellant's encounter with a police officer at a political debate, denial of post-sentence motion to withdraw plea was not error where claim that defense counsel did not explain various aspects of appellant's case is without merit since appellant had no First Amendment right to make an unprovoked physical assault on another, especially an officer acting according to official responsibilities following appellant's detention.

Indictment. State v. Ford, 2021-Ohio-4608 | 8th Appellate District | 12/30/2021 In an appeal by the state of grant of defendant's motion to dismiss two counts of a five-count indictment of gross sexual imposition, the trial court erred in granting motion since indictment for the two counts sufficiently charged a criminal offense under R.C. 2907.05(A)(4) where, under R.C. 2907.01(B), contact with a victim's neck or hip may constitute prohibited "sexual contact" with an erogenous zone since the enumeration of erogenous zones in R.C. 2907.01(B) is non-exhaustive; also, statute is not unconstitutionally vague.

Gross sexual imposition. State v. Mole, 2021-Ohio-4628 | 5th Appellate District | 12/30/2021 In a conviction of two counts of gross sexual imposition, R.C. 2907.05(A)(4), one count did not meet the sufficiency and weight of evidence standards where the contact did not involve the touching of an erogenous zone of either the appellant or the other person involved, but the other count did meet the sufficiency and

weight of evidence standards where appellant hugged another person chest-to-chest, supporting a finding that the hug brought appellant into contact with victim's breasts, one of the erogenous zones listed in R.C. 2907.01(B).

Search. State v. Holler, 2021-Ohio-4599 | 9th Appellate District | 12/30/2021 In a conviction of, inter alia, drug and weapons offenses, denial of motion to suppress was error where although the officer had reasonable suspicion to make a traffic stop, the trial court failed to determine whether the officer had a constitutional basis to extend appellant's detention beyond the initial purpose for the traffic stop since, even if appellant's initial detention was lawful, the lawfulness of his continued detention was a separate issue, and the court did not consider whether any continued detention that occurred was based on reasonable suspicion.

Impaired driving. State v. Chirdon, 2021-Ohio-4598 | 9th Appellate District | 12/30/2021 Bench conviction of OVI, R.C. 4511.19(A)(1)(a), was not supported by sufficient evidence since there was no evidence that appellant drove a vehicle to a police station to report an accident that a truck she had been driving was involved in where arresting officer did not testify that he observed her driving to the police station, nor that he asked her whether she drove to the station or the amount of time that elapsed between the time the truck arrived at the station and the time that officer made contact with appellant, notwithstanding appellant admitted to having an alcoholic beverage and failed field sobriety tests.

Sealing. State v. P.J.U., 2021-Ohio-4611 | 8th Appellate District | 12/30/2021 Denial of successive application to seal record of conviction of carrying a concealed weapon was not error where the trial court had denied the original application and two motions for reconsideration since successive application is barred by res judicata because appellant did not demonstrate any change in circumstances between the current application to seal his criminal record and the previously filed application.

Evidence. State v. Meeks, 2022-Ohio-6 | 5th Appellate District | 01/03/2022 In a conviction of multiple counts of rape and gross sexual imposition, the trial court did not err by allowing witnesses to testify about victims' prior consistent statements where appellant's counsel implied by her questions in cross-examination of victims that they were lying or fabricating their stories, Evid.R. 801(D)(1)(b), and moreover, any error was harmless since victims' testimonies were sufficient to support the convictions, Evid.R. 801(D)(1)(b).

Plea. State v. Hamilton, 2022-Ohio-139 | 6th Appellate District | 01/04/2022 In a conviction by plea of aggravated vehicular assault, R.C. 2903.08(A)(1)(a) and (B), plea was not validly made since the trial court failed to strictly comply with Crim.R. 11(C)(2)(c) to inform defendant of his constitutional right to be free from compulsory self-incrimination at trial.

Bail. DuBose v. McGuffey, 2022-Ohio-8 | Supreme Court of Ohio | 01/04/2022 In an appeal by the state of the court of appeals' grant of writ of habeas corpus and order reducing petitioner's bail from $1,500,000 to $500,000 with no 10 percent bond and including non-financial conditions, judgment is affirmed since the financial condition of bail set by the trial court was unconstitutionally excessive because it was more than the amount reasonably necessary to ensure petitioner's appearance in court where it did not take into consideration petitioner's financial resources as required by Crim.R. 46, nor did the state seek detention of petitioner without bail as provided in R.C. 2937.222.

Post-conviction relief. State v. Smith, 2022-Ohio-12 | 1st Appellate District | 01/05/2022 Following a conviction of, inter alia, burglary and drug offenses that was affirmed following remands, denial of "Motion for Summary Judgment to Vacate Judgment and Sentence," treated as a successive pro se petition for post-conviction relief, is affirmed as modified since petition was untimely filed, R.C. 2953.21(A)(2)(a), and petition did not fall under either of the statutory exceptions, R.C. 2953.23(A), where claim relied on the complaints and affidavit filed by the arresting officer in 2015 and the record does not otherwise show appellant was unavoidably prevented from discovering those facts.

Discovery. State v. Wells, 2022-Ohio-30 | 2nd Appellate District | 01/07/2022 In a conviction of, inter alia, attempted murder, appellant was not denied a fair trial by the trial court in not enforcing discovery rules pursuant to Crim.R. 16(I) to provide a witness list since the failure to provide the list was not a willful violation where the state inadvertently sent the list to the attorney representing appellant in another case who was also representing him in the instant case, appellant's motion to compel pursuant to Crim.R. 16(M), filed untimely, and appellant was not prejudiced since there was overwhelming evidence of his guilt, including a video of the shooting.

Ineffective assistance. State v. Hovatter, 2022-Ohio-33 | 6th Appellate District | 01/07/2022 In a conviction of, inter alia, three counts of complicity to the rape of a minor, appellant was not denied effective assistance of counsel where trial counsel articulated her own thorough and well-reasoned arguments in support of the Crim.R. 29 motion for acquittal, and defense counsel also made specific arguments as to each count and, moreover, since convictions were supported by sufficient evidence, any failure of counsel not to articulate the specific arguments set forth by appellant on appeal did not prejudice appellant.

Post-conviction relief. State v. Clemmons, 2022-Ohio-27 | 2nd Appellate District | 01/07/2022 Following a 2008 conviction of rape of a child under 10 years-old that was affirmed, and denials of 2017 and 2018 petitions for post-conviction relief, denial of 2021 "Claim of Actual Innocence," treated as a successive petition for post-conviction relief, was not error since untimely filed, R.C. 2953.21(A)(2), and the exceptions for the filing of an untimely petition set forth in R.C. 2953.23(A)(1)(a) were not met; also, since all of the claims raised in the petition could have been raised in the direct appeal or in prior post-conviction relief petitions, claims are also barred by res judicata.

Ineffective assistance. State v. Inabnitt, 2022-Ohio-53 | 12th Appellate District | 01/10/2022 In a conviction of felonious assault, defense counsel did not provide ineffective assistance in not using a self-defense theory since theory of case pursued was that the victim's injury was the result of an accident in not requesting an instruction for aggravated assault since there was no evidence that the victim provoked appellant in not retaining an expert witness since nothing in the record indicates what kind of testimony an expert could have provided, and for not calling the defendant to testify since nothing in the

record suggests the decision not to call appellant as a witness was anything other than sound trial tactics.

Evidence. State v. Schmelmer, 2022-Ohio-57 | 5th Appellate District | 01/10/2022 In a bench conviction of rape, R.C. 2907.02, and kidnapping, R.C. 2905.01(A)(4), the trial court did not err in excluding certain evidence since the excluded evidence lacked probative value because the opinion of others at a party as to the victim's dress and her behavior did not go to any of the elements of the offenses charged, and appellant was free to cross-examine the victim about her dress, her behavior and her upcoming wedding, and the "Rape Shield" law, R.C. 2907.02(D), prohibits evidence a victim may have engaged in sexual activity with someone else to show consent to sexual conduct with appellant.

Transcript. State v. McAusland, 2022-Ohio-37 | 9th Appellate District | 01/10/2022 Following a 1994 conviction by plea of burglary in one case and gross sexual imposition and attempted felonious sexual penetration in the other case and subsequent termination from probation in 1998, and then appellant being arrested in 2019 and ordered deported based on his 1994 convictions, denial of 2020 motion to withdraw pleas is affirmed since appellant failed to provide a transcript of the hearing on the motion to withdraw plea, and thus the court of appeals must presume the regularity of the trial court proceedings and affirm.

Evidence. State v. Worship, 2022-Ohio-52 | 12th Appellate District | 01/10/2022 In a bench conviction of felonious assault, R.C. 2903.11(B)(1), arising out of defendant's sexual relationship with victim where victim testified defendant failed to tell her that he had tested positive for HIV, even though victim asked defendant whether he had any sexually transmitted diseases, although defendant's medical records showing that he had tested positive for HIV were admitted erroneously since the records did not comply with the R.C. 2317.422(A) requirements for authentication, error was harmless under Crim.R. 52(A) since ample evidence was presented to show that appellant knew about his diagnosis and failed to fully disclose he was HIV positive to the victim.

Grand theft. State v. Dettwiller, 2022-Ohio-134 | 4th Appellate District | 01/13/2022 Conviction of two counts of grand theft of an automobile, R.C. 2913.02(A)(1), met the sufficiency and weight of evidence standards since there was evidence that appellant had been visiting at owner's residence where vehicle was stolen, owner noticed two sets of keys to vehicle missing from the location owner kept them near the door defendant had exited, officer saw a person with similar characteristics of defendant driving vehicle, vehicle was found on a street and returned with one set of keys to owner, and vehicle was stolen again and defendant was driving the vehicle with the other set of keys when stopped.

Failure to evict. Greenfield v. Smith, 2022-Ohio-133 | 4th Appellate District | 01/13/2022 In village's minor misdemeanor charges against defendant-landlord/owner for failure to initiate eviction proceedings against tenants occupying residential structures that were the subject of village's condemnation notice, the trial court did not err in granting motion to dismiss since the village's notice was not based on a violation of an "applicable building code, health ordinance or similar regulation," the federal Eviction Moratorium precludes evictions during the COVID-19 pandemic, and the trial court was not acting unreasonably by declining to evaluate the exceptions to the federal act.

Disorderly conduct. Woodmere v. Workman, 2022-Ohio-71 | 8th Appellate District | 01/13/2022 Conviction of misdemeanor disorderly conduct and municipal ordinance prohibiting the playing of sound devices, arising out of appellant's playing a musical instrument in the vicinity of a shopping center, violated appellant's First Amendment right to free speech since convictions were entirely based on appellant's verbal criticism and challenge to officers' authority over his First Amendment right to free speech where that speech did not amount to "fighting words," constituting an impermissibly based selective prosecution in an attempt to secure a conviction for any crime based solely on appellant's exercise of his First Amendment rights.

Transcript. State v. Justice, 2022-Ohio-87 | 10th Appellate District | 01/13/2022 In defendant's pro se challenge to, inter alia, the trial court's finding her to be incompetent to stand trial, but restorable within one year and committing her to the custody of a behavioral health facility for inpatient treatment, judgment is affirmed since defendant failed to ensure that a transcript was prepared and filed in the court of appeals, and the court is required to presume the regularity of the proceedings under review and affirm.

Post-conviction relief. State v. Johnson, 2022-Ohio-81 | 8th Appellate District | 01/13/2022 Following a 2012 conviction of, inter alia, attempted murder that was affirmed, denial of 2020 successive petition for post-conviction relief without a hearing was not error since petition was untimely filed under R.C. 2953.21(A)(2)(a) and did not qualify for the R.C. 2953.23 exceptions to the timeliness requirement where appellant relied on an August 2020 affidavit of victim, who identified appellant at the trial, recanting his testimony, but appellant failed to demonstrate he was unavoidably prevented from discovering the basis for his petition prior to the filing of his 2020 petition.

Search. State v. Stewart, 2022-Ohio-199 | 8th Appellate District | 01/13/2022 On reconsideration, in an appeal by the state of grant of motions to suppress in a prosecution against two defendants of, inter alia, drug offenses, grant of motion was error where the trial court found the traffic stop was not supported by reasonable suspicion, but failed to consider officer's testimony that supported the traffic stop, and thus it did not analyze the legality of the interaction between the officers and defendant following the traffic stop in order to determine whether officers had probable cause to search vehicle; remanded for consideration of the legality of the interaction between the officers and appellees following the initial stop.

Plea withdrawal. State v. Lewis, 2022-Ohio-70 | 8th Appellate District | 01/13/2022 Following a plea of, inter alia, drug offenses, that was affirmed in 2019, and denial of 2019 application to re-open appeal, denial of 2021 motion to withdraw plea without a hearing for ineffective assistance of counsel was not error since claim that appellant's trial attorney failed to request the drugs be independently analyzed was barred from further review after the court of appeals affirmed his convictions, and Crim.R. 32.1 did not vest jurisdiction in the trial court to maintain and determine appellant's subsequent motion to withdraw his guilty pleas, Special Prosecutors.

Jury. State v. Yates, 2022-Ohio-76 | 8th Appellate District | 01/13/2022
In a conviction of, inter alia, aggravated murder, claim that there were irregularities in the jury process because a juror was personally acquainted with the judge and that they participate in civic organizations and hold fundraisers to raise money for children's organizations is without merit where the trial judge engaged in a colloquy with the juror concerning their knowledge of one another through a social organization and the juror stated that he would not be swayed by the acquaintance or the fact that the juror's brother served as a police officer.

Post-conviction relief. State v. Johnson, 2022-Ohio-78 | 8th Appellate District | 01/13/2022 Following a 2013 conviction of, inter alia, murder that was affirmed, denial of 2020 petition for post-conviction relief without a hearing was not error because petition was untimely filed under R.C. 2953.21(A)(2)(a) and did not qualify for the R.C. 2953.23 exceptions to the timeliness requirement since, while the affidavit of a witness in another case may have allowed appellant to impeach that witness' testimony at his trial, it would not have negated the testimony presented at trial by other witnesses who placed appellant at the scene of the crime and also identified him as the gunman.

Appeal. State v. Robinson, 2022-Ohio-82 | 8th Appellate District | 01/13/2022
Following a 2018 conviction by plea of, inter alia, drug and weapon offenses, and appellant's subsequent deportation, appellant filed a pro se Crim.R. 32.1 "Motion to Vacate Plea" in 2020 claiming ineffective assistance of counsel that was denied by the trial court, the court of appeals finds that appeal was filed untimely, App.R. 4, and appellant failed to request a delayed appeal of the trial court's judgment pursuant to App.R. 5(A); the court also comments that appellant failed to identify any evidence from the record substantiating his claim that he would not have pled guilty had he known he would be deported.

Search. State v. Morris, 2022-Ohio-94 | 2nd Appellate District | 01/14/2022
In a conviction by plea of aggravated drug possession, denial of motion to suppress was not error where, during a valid traffic stop, officer arrested driver for OVI and vehicle could not be driven due to expired license tags, defendant-passenger voluntarily consented to open her purse after agreeing to be taken to police station by officer and officer observed a small baggie used for drugs, defendant was not patted down, cuffed, administered field sobriety tests or placed in the cruiser, and no duress, threat or force was used by officer.

Search. State v. Carter, 2022-Ohio-91 | 2nd Appellate District | 01/14/2022 In a conviction by plea of aggravated drug possession, denial of motion to suppress was not error where officers responded to an alert provided by gunfire detection technology and then by dispatch, they responded in less than four minutes and saw defendant within a short distance of the address provided in the alert, it was late at night and only defendant was in the area, he told officers he had been visiting a friend at a specific address, but was unable to provide a name, defendant canted his body away from the officers who were in their car and, during search of defendant for weapons, officer found methamphetamine "sticking right out" of defendant's mesh shorts.

Appeal. State v. Morrison, 2022-Ohio-104 | 11th Appellate District | 01/18/2022
Pro se appeals in separate cases consolidated for appeal are dismissed as untimely filed, App.R. 4(A)(1), where no leave to appeal pursuant to App.R. 5(A) was filed, and thus the court is without jurisdiction to consider the appeals.

Search. State v. Massey, 2022-Ohio-100 | 12th Appellate District | 01/18/2022
In an appeal by the state of grant of motion to suppress in a drug prosecution arising out of a traffic stop, officer's traffic stop was not supported by a lawful reason since the stop was made because officer knew that defendant had had her license suspended but, after the stop, he found that it was no longer suspended, he failed to recall whether there was a stop bar that defendant had not stopped behind, and defendant did not voluntarily consent to a search of her vehicle or her purse.

Juror misconduct. State v. Helvey, 2022-Ohio-98 | 12th Appellate District | 01/18/2022 In a conviction of firearm-related offenses, the trial court did not err by not declaring a mistrial for juror misconduct since a juror's comment, in response to a comment by another juror of defendant's calm demeanor, that appellant was "always like that" implied nothing about appellant's character other than he has an unemotional demeanor and could even be perceived positively by communicating to other jurors that appellant's unemotional demeanor was normal for him and thus reinforce the fact that his disposition in the courtroom was irrelevant, and all jurors assured the court that they could decide the case fairly and impartially.

Post-conviction relief. State v. D.M., 2022-Ohio-108 | 10th Appellate District | 01/18/2022 Following a 2010 conviction of, inter alia, rape that was affirmed, denial of 2020 pro se "Motion to Correct Partially Void Sentence" for the trial court's failure to impose post-release control was not error since sentencing errors in the imposition of post-release control render a sentence voidable, not void, and the sentence may be set aside only if successfully challenged on direct appeal, Harper.

Post-conviction relief. State v. Cook, 2022-Ohio-97 | 3rd Appellate District | 01/18/2022 Following a 2019 conviction of, inter alia, three counts of rape that was affirmed on appeal, denial of petition for post-conviction relief without a hearing was not error where claim that trial counsel was ineffective in not challenging admission of state expert's testimony is without merit since appellant was represented by different counsel in his direct appeal, and res judicata bars appellant from arguing that counsel was ineffective for failing to challenge the testimony under Evid.R. 702(A) and (B), and appellant did not present sufficient operative facts to demonstrate that his trial counsel was ineffective for failing to dispute the reliability of the testimony under Evid.R. 702(C).

Miranda. State v. Green, 2022-Ohio-101 | 12th Appellate District | 01/18/2022
In a conviction of first-degree felony rape, R.C. 2907.02(A)(2), the trial court erred in denying motion to suppress statements that appellant made to police because the waiver of his Miranda rights was not knowingly, intelligently and voluntarily entered where, although the trial court found that appellant voluntarily waived his Miranda rights, the court failed to make any finding as to whether the waiver was knowingly and intelligently entered; conviction is vacated and matter is remanded.

Fine. State v. Bice, 2022-Ohio-122 | 5th Appellate District | 01/19/2022
In a conviction by plea of second-degree felony drug possession, the trial court did not err by denying appellant's

request to waive a mandatory fine of $7,500 where appellant's financial disclosure form did not provide sufficient information to support a finding of indigency; also, challenge to the Reagan Tokes Act is not ripe for appellate review.

Reopening. State v. Rosemond, 2022-Ohio-111 | 1st Appellate District | 01/19/2022 In an application to re-open appeal, App.R. 26(B), in conviction of, inter alia, murder, appellate counsel provided ineffective assistance in failing to assign as error trial counsel's ineffectiveness concerning imposition of an unauthorized period of post-release control for murder, but appellant was not denied the effective assistance of counsel by counsel not arguing that gun and drug charges arising out of a prior incident should not have been joined with the murder and assault charges in the same indictment under Crim.R. 8 since appellant failed to demonstrate prejudice.

Right to counsel. State v. Condos, 2022-Ohio-112 | 9th Appellate District | 01/19/2022 In a bench conviction of municipal criminal trespassing, the trial court violated appellant's constitutional rights by not ensuring that he voluntarily, knowingly and intelligently waived his right to counsel where record discloses no indication that the trial court explained the nature of the charges, the statutory offenses included within them, the range of allowable punishments, possible defenses, mitigation or other facts essential to a broad understanding of the whole matter, Martin; remanded to allow appellant the opportunity to request a new trial or to request jail term portion of sentence be vacated.

DNA testing. State v. Lenhart, 2022-Ohio-125 | 8th Appellate District | 01/20/2022 Following a 1998 conviction of rape and felonious assault that was affirmed, denial of 2020 pro se motion for DNA testing was not error since a DNA test would not be outcome-determinative because appellant's convictions were based on the victim's testimony positively identifying appellant as the perpetrator, as well as his own admissions that he engaged in sexual conduct with the victim, but claimed it was consensual, R.C. 2953.71, et seq.

Competency. State v. Branch, 2022-Ohio-132 | 8th Appellate District | 01/20/2022 In a conviction by plea of attempted felonious assault, the trial court did not err by refusing to allow a second psychological evaluation of defendant, even though the state and defense counsel supported the evaluation where the court found that defendant's articulate and clear answers to court's questions about his decision not to pursue his motion to remove counsel and his multiple pro se motions demonstrated his competency and established his ability to understand the nature of the charges against him and his ability to assist in his defense.

Appeal. State v. Browning, 2022-Ohio-127 | 8th Appellate District | 01/20/2022 In a conviction by plea of sexual battery, although the trial court failed to advise appellant of his Crim.R. 32(B) appellate rights since appellant's motion for a delayed appeal was granted, he incurred no prejudice, and thus any error was harmless.

Search. State v. Jones, 2022-Ohio-149 | 2nd Appellate District | 01/21/2022 In an appeal by the state of grant of motion to suppress, the trial court did not err in finding that defendant was seized in violation of the Fourth Amendment since officer's act of positioning his cruiser made it difficult for defendant, lawfully parked in an apartment parking lot with his engine running, to leave, officer lacked a reasonable suspicion of criminal activity, and officer's actions constituted a show of authority sufficient to cause a reasonable person to believe he or she was not free to leave.

Evidence. State v. Hatfield, 2022-Ohio-148 | 2nd Appellate District | 01/21/2022 In a conviction of, inter alia, two counts of murder, admission of a recorded phone conversation of defendant with another person during a police chase was admissible where, even though the entire conversation lasted longer than the recorded portion, the recorded portion was admissible since there is no indication that any portion of the recording was missing or that the state failed to provide a complete recording to appellant, Evid.R. 106, and it was properly authenticated, Evid.R. 901(A).

Evidence. State v. Curtiss, 2022-Ohio-146 | 2nd Appellate District | 01/21/2022 In a conviction of rape of a child under ten years of age and gross sexual imposition of a person less than 13 years of age, the trial court erred in failing to permit disclosure of confidential records from the county children services agency of the child's mother's history of making, inter alia, inconsistent statements and false accusations and, if the evidence had been disclosed, the mother's testimony may have been disbelieved and material evidence was relevant to the defense presented.

Speedy trial. State v. Wright, 2022-Ohio-143 | 6th Appellate District | 01/21/2022 In a conviction by plea of third-degree felony attempted improperly discharging a firearm into a habitation, denial of motion to dismiss for a speedy trial violation, R.C. 2945.71, et seq., was not error where, taking into consideration the times that were charged against the state and defendant, including the Covid-19 tolling provisions, defendant's plea was entered within the 270-day limit imposed by R.C. 2945.71(C)(2).

Competency. State v. Voris, 2022-Ohio-152 | 2nd Appellate District | 01/21/2022 In a conviction by plea of unlawful sexual conduct with a minor, R.C. 2907.04(A)/(B)(3), the trial court did not err by denying appellant's request for a competency examination after appellant had undergone two prior competency examinations, the parties had stipulated to the findings of the examinations that found appellant competent, and appellant's responses at the third competency hearing were coherent, appropriate and did not raise a genuine question of his ability to understand the proceedings or to aid his attorneys.

Expert witness. State v. Saldivar, 2022-Ohio-144 | 6th Appellate District | 01/21/2022 In a conviction of rape and unlawful sexual conduct with a minor, admission of testimony presented by a clinical psychologist as expert testimony on delayed or partial reporting of child sexual abuse was not error since admissible as "other specialized information," Evid.R. 702(C), that witness had gained through her clinical experience.

Forfeiture. State v. Bullis, 2022-Ohio-159 | 12th Appellate District | 01/24/2022 Following a conviction of OVI, denial of motion to set aside forfeiture of vehicle is affirmed since claims that OVI statute is unconstitutional and that the criminal forfeiture of vehicle is an unconstitutionally excessive fine are barred by res judicata because appellant could have, but did not, challenge the trial court's forfeiture order in a direct appeal, and a motion to vacate or set aside a judgment cannot be used as a substitute for a timely direct appeal.

Plea withdrawal. State v. Owens, 2022-Ohio-160 | 12th Appellate District | 01/24/2022 In a conviction by plea of first-degree felony rape, R.C. 2907.02(A)(2), and imposition of an eight-year prison term, denial of post-sentencing Crim.R. 32.1 motion to withdraw guilty plea was not error where appellant had a change of heart since his primary motivation in moving to withdraw his guilty plea was the trial court's imposition of an eight-year prison sentence, rather than the lower one that appellant had hoped for, notwithstanding defense counsel's informing appellant on the day of the sentencing hearing that the trial judge had indicated that the sentence would be on the "low end."

Post-conviction relief. State v. Weir, 2022-Ohio-163 | 11th Appellate District | 01/24/2022 Following a 2016 conviction by plea of eight counts of pandering obscenity involving a minor and imposition of a stipulated recommended ten-year prison sentence that was affirmed, denial of 2021 pro se petition for post-conviction relief was not error since appellant's petition was untimely filed, and appellant failed to establish he was unavoidably prevented from discovery of facts on which he relies, R.C. 2953.23(A)(1)(a) and (b), since the matters relied on by appellant were letters that did not contain "facts," but an opinion about whether the trial judge would have granted judicial release.

Appeal. State v. Ralph, 2022-Ohio-167 | 11th Appellate District | 01/24/2022 State's motion for leave to appeal following the trial court's grant of defendant's Crim.R. 29(A) motion for acquittal is denied by the court of appeals since a judgment of acquittal is not appealable by the state as a matter of right or by leave of the court, and the appeal does not involve a question of a discrete legal issue that is capable of repetition.

Mootness. State v. Johnson, 2022-Ohio-179 | 5th Appellate District | 01/25/2022 Following a 2015 conviction of felonious assault and aggravated burglary and imposition of consecutive prison sentences totaling 14 years and restitution that was affirmed, the trial court had no jurisdiction to increase the amount of restitution in 2016 after appellant had filed his direct appeal, and the court of appeals vacates the amended sentence, reinstates the original 2015 sentence and dismisses the appeal as moot since the trial court did not have jurisdiction to amend the sentence.

Selective prosecution. State v. Williamson, 2022-Ohio-185 | 9th Appellate District | 01/26/2022 In a prosecution of former deputy sheriff for sexual assault offenses and for illegal usage of Ohio Law Enforcement Gateway program in which defendant was found not guilty of the sexual assault charges, the trial court erred in dismissing the illegal usage of a database charge on the basis of selective prosecution since the record did not support the trial court's conclusion that the sheriff's office purposely singled out appellant for prosecution based on his race since the Ohio Attorney General uncovered defendant's searches and instructed the sheriff's office to present the case to the prosecutor.

Right to counsel. Cleveland v. Davis, 2022-Ohio-195 | 8th Appellate District | 01/27/2022 In a conviction of misdemeanor domestic violence and petty theft, the trial court erred in allowing defendant to proceed to trial pro se without ensuring he had knowingly, intelligently and voluntarily waived his Sixth Amendment right to counsel where the trial court's colloquy with defendant did not include any discussion of the consequences of waiving counsel, the charges against him, or possible defenses.

Search. State v. Jackson, 2022-Ohio-187 | 8th Appellate District | 01/27/2022 In state's appeal of grant of motion to suppress in a prosecution for weapons offenses, the trial court did not err since officer did not possess sufficient reasonable, articulable suspicion to perform an investigative stop where neither the vehicle stopped by officer nor the driver matched the descriptions in dispatch relied on in making the stop, nor was the encounter consensual, and the weapon found during search was not in plain view.

Post-conviction relief. State v. Majid, 2022-Ohio-189 | 8th Appellate District | 01/27/2022 Following a 2011 conviction of, inter alia, murder that was affirmed in part, but remanded to impose sentences on firearm specifications, the trial court did not err in denying 2021 motion to correct sentence, treated as an untimely, successive petition for post-conviction relief of alleged sentencing errors not raised in appellant's direct appeal, since the trial court had subject-matter jurisdiction over the case and personal jurisdiction over appellant, any sentencing error would render the sentence voidable, not void, and not subject to collateral attack in a post-conviction proceeding, Henderson.

Speedy trial. Cleveland v. Gross, 2022-Ohio-193 | 8th Appellate District | 01/27/2022 In city's appeal of dismissal of first-degree misdemeanor child endangering, the trial court erred in dismissing on speedy trial grounds since statutory right to a speedy trial had not been violated under R.C. 2945.71(B)(2) or (C)(2) because, following dismissal of felony charges based on the same conduct and the filing of misdemeanor charges, regardless of which speedy-trial time limitation under R.C. 2945.71(B)(2) or (C)(2) is applied, only 54 days elapsed because the time between dismissal of the felony charge and appellant's first appearance on the misdemeanor charge is not counted in the speedy-trial analysis.

Plea. State v. Whaley, 2022-Ohio-188 | 8th Appellate District | 01/27/2022 In a conviction by plea of sexual offenses and imposition of consecutive prison sentences totaling 13 years, plea was validly made, even though during the plea colloquy the trial court made inconsistent statements of the maximum sentence that could be imposed, it was not a complete failure to comply with Crim.R. 11(C)(2)(a), and appellant does not demonstrate he was prejudiced where the trial court imposed an aggregate sentence that was within the 3- to 22-year sentence that it referenced to appellant prior to the Crim.R. 11 colloquy.

Plea withdrawal. State v. Hutchison, 2022-Ohio-219 | 5th Appellate District | 01/27/2022 Following a conviction by plea of, inter alia, felonious assault of a police officer and improper handling of a firearm in a motor vehicle and denial of 2016 pro se post-judgment motions to withdraw plea that was affirmed, denial of 2020 pro se motion to withdraw plea, treated as a petition for post-conviction relief, was not error where untimely filed and barred by res judicata.

Mandamus. State ex rel. Swopes v. McCormick, 2022-Ohio-306 | 8th Appellate District | 01/28/2022 In a mandamus action to compel the trial judge in an underlying criminal action to reverse grant of state's request to conduct additional DNA testing of

preserved genetic material and to allow relator to independently test that material, respondent's motions to dismiss is granted where relator failed to comply with the procedural requirements in R.C. 2969.25(A) and (C); also, mandamus will not lie to control judicial discretion in ruling on the state's request for additional DNA testing.

Right to counsel. State v. Estridge, 2022-Ohio-208 | 2nd Appellate District | 01/28/2022 In a conviction by plea of first-degree misdemeanor possessing a controlled substance, R.C. 2925.11(A), the trial court erred by accepting appellant's guilty plea and by sentencing him to jail without first obtaining a valid waiver of his constitutional right to counsel, and no waiver can be inferred where original charge of felony drug possession was dismissed pursuant to an agreement in which appellant was represented by counsel, but there is no indication that appellant was represented by counsel in this action, Crim.R. 44(B); imposition of jail sentence is vacated.

Search. State v. Miller, 2022-Ohio-213 | 2nd Appellate District | 01/28/2022 On reconsideration, in appeal by the state of grant of motions to suppress in a prosecution against two defendants of, inter alia, drug offenses, grant of motion was error where the trial court failed to consider whether officer was promptly notified that co-defendant had a concealed carry weapon license in order for the court to determine whether officer had probable cause to search vehicle after officer saw weapon in plain view in the vehicle.

Bail. State v. Blackshear, 2022-Ohio-230 | 6th Appellate District | 01/28/2022 In a prosecution of aggravated robbery and kidnapping, both first-degree felony offenses, the trial court did not err in revoking defendant's bond and ordering him to be held without bail, R.C. 2937.222, since from the evidence presented at the hearing, it could reasonably be inferred that the serious and violent actions appellant took against victim were motivated by a desire for revenge and that there are no conditions of release that would reasonably assure that appellant would not further harm victim in retaliation for his cooperation with the police investigation and court proceedings.

Post-conviction relief. State v. Wolfe, 2022-Ohio-215 | 2nd Appellate District | 01/28/2022 Following a conviction of murder that was affirmed and, inter alia, denial of successive petition for post-conviction relief was not error where claim that the trial court erred by not dismissing the aggravated murder charge after appellant was found guilty of the lesser-included offense of murder is barred by res judicata and, moreover, a finding of guilt on a lesser-included offense operates as an acquittal of the greater offenses, Edmondson.

Post-conviction relief. State v. Quinn, 2022-Ohio-214 | 2nd Appellate District | 01/28/2022 Following a 2014 conviction of, inter alia, domestic violence and kidnapping that was affirmed, denial of pro se third motion for a new trial, a second petition for post-conviction relief and a Civ.R. 60(B) motion for relief from judgment was not error since the issues raised were either barred by res judicata or moot where all the material issues and arguments that appellant raises in his latest motion and petition were or could have been raised in prior proceedings that appellant had pursued.

Search. State v. Shoenberger, 2022-Ohio-253 | 11th Appellate District | 01/31/2022 In a conviction by plea of drug offenses, denial of motion to suppress was error where officer's response to a call about a possible overdose situation of a person in a car did not indicate that officer had a reasonable suspicion that appellant was "armed and presently dangerous" since defendant was alert, responsive and did not seem intoxicated and officer testified he did not see anything in plain view or that appellant made any furtive or evasive movements, but that it was his "practice" to pat someone down for his own and the other person's protection.

Involuntary manslaughter. State v. Skoog, 2022-Ohio-267 | 5th Appellate District | 01/31/2022 Conviction of, inter alia, involuntary manslaughter, arising out of victim's death while appellant was handling a firearm, was not against the weight of evidence where appellant's original wrongful conduct of having a weapon while intoxicated, combined with the natural and continuous sequence of that act by the victim handling the loaded weapon, was the proximate cause of the victim's death, and the death would not have taken place without appellant's original act of having the weapon while intoxicated.

Search. State v. Meadows, 2022-Ohio-287 | 4th Appellate District | 01/31/2022 In a conviction by plea of aggravated possession of drugs, R.C. 2925.11, denial of motion to suppress was not error where trooper had reasonable suspicion of a traffic violation, and the evidence presented at the suppression hearing failed to establish that appellant was in custody at any point during the encounter with law enforcement until he was handcuffed and Mirandized after trooper found drugs in the vehicle during a consent to search of the vehicle since appellant made no incriminating statements until after he had been Mirandized.

Competency. State v. Hudkins, 2022-Ohio-249 | 12th Appellate District | 01/31/2022 In a prosecution for menacing by stalking and violating a protection order, the trial court erred by finding that a second finding of incompetency, after a period of competency, started an entirely new six-month restoration period for treatment under R.C. 2945.38(C)(2); remanded with instructions to apply R.C. 2945.38(H)(4) by either dismissing the indictment and discharging appellant or by seeking civil commitment pursuant to R.C. Chap. 5122 or 5123.

Evidence. State v. Zappa, 2022-Ohio-243 | 9th Appellate District | 01/31/2022 In a bench conviction of public indecency, R.C. 2907.09(A)(1) and (A)(2), during a massage session, the trial court did not err by granting state's motion in limine and prohibiting appellant from inquiring on cross-examination about the massage therapist's level of licensure since the court did permit appellant to inquire fully regarding the therapist's education, training and experience; the trial court erred by imposing the maximum jail sentence available for a violation of R.C. 2907.09(A)(2) and placing appellant under community control without suspending any of his jail term.

Search. State v. Roswell, 2022-Ohio-260 | 11th Appellate District | 01/31/2022 In a conviction by plea of obstructing justice, R.C. 2921.32, denial of motion to suppress statements made by appellant as a result of roadside questioning by officer during a traffic stop was not error since appellant was not "in custody" for the purposes of requiring Miranda warnings because, although he may have been the subject of a narcotics investigation at the time of the stop, it did not render him "in custody" where he was not subjected to pressures in the course of the traffic stop that sufficiently impaired the free exercise of his

privilege against self-incrimination to require that he be warned of his constitutional rights.

Competency. State v. Allen, 2022-Ohio-268 | 5th Appellate District | 01/31/2022 In a conviction of rape of a child under 10 years of age, R.C. 2907.02(A)(1)(b), although appellant assigns as error that the trial court erred in finding child competent to testify, appellant did not challenge the competency determination, but argued that the child's testimony was inconsistent and demonstrated her incompetency, but inconsistencies between a child's trial testimony and the testimony of other witnesses relate to the child's credibility, not competency, and credibility was a matter for the jury's consideration.

Attempted rape. State v. Monebrake, 2022-Ohio-246 | 12th Appellate District | 01/31/2022 Conviction of attempted rape, R.C. 2907.01(A)(4), and attempted gross sexual imposition, R.C. 2907.05(A)(4), of appellant's minor daughter met the sufficiency and weight of evidence standards where appellant told his wife about his plans to involve their children in sexual activities that would constitute rape or gross sexual imposition if completed, and appellant thereafter acted on those thoughts and plans as testified by his wife and he admitted his intentions to an officer.

Violation of a domestic violence civil protection order. State v. Estep, 2022-Ohio-245 | 12th Appellate District | 01/31/2022 Conviction of violation of a domestic violence civil protection order met the sufficiency and weight of evidence standards where protected person's testimony and two persons who were at a gas station testified that appellant threatened the protected person at that time and, although defendant and two of his friends testified that defendant did not threaten the protected person, the jury was entitled to reject appellant's version of events, and the jury did not lose its way or create a manifest miscarriage of justice.

Lay opinion. State v. Roper, 2022-Ohio-244 | 12th Appellate District | 01/31/2022 In a conviction of three counts of cruelty against a companion animal, R.C. 959.131(D)(2), the trial court did not err by permitting employee of animal facility to offer her opinion about the condition of the dogs on her initial contact with them where, contrary to appellant's claim that the trial court permitted a witness to testify as an expert, the record plainly reveals that the witness did not testify as an expert witness under Evid.R. 702, but as a lay witness pursuant to Evid.R. 701.

Ineffective assistance. State v. McCleery, 2022-Ohio-263 | 11th Appellate District | 01/31/2022 In a conviction of, inter alia, attempted rape, defense counsel did not provide ineffective assistance: by not objecting to state's leading questions to alleged victim since it does not demonstrate the testimony or outcome would have been different; by not objecting to the state eliciting testimony from an expert about DNA since it could have been part of a strategy to emphasize that defendant's DNA was not present; and by not requesting a jury charge of "false in one, false in all" since not warranted by mere inconsistencies in victim's testimony.

Reopening. State v. Martin, 2022-Ohio-367 | 7th Appellate District | 02/01/2022 Pro se application to re-open appeal, App.R. 26(B), is denied since appellant failed to demonstrate that appellate counsel was deficient because claim trial counsel provided ineffective assistance was raised and decided adversely to appellant in his direct appeal, and appellate counsel did not provide ineffective assistance concerning speedy trial issues since the issues were raised and decided adversely to appellant in his direct appeal.

Falsification. State v. Geer, 2022-Ohio-289 | 5th Appellate District | 02/01/2022 Bench conviction of falsification, R.C. 2921.13(A)(3), was supported by sufficient evidence that officer was performing his official duties when appellant made his false statement to the officer since the investigation of crimes is an "official function" of police officers, including gathering accurate information of all individuals involved in an incident, both potential defendants and potential witnesses.

Plea. State v. Stiltner, 2022-Ohio-290 | 5th Appellate District | 02/01/2022 In a conviction by plea of, inter alia, felonious assault and imposition of agreed sentence between appellant and state, claim that plea was not valid because of the prosecutor's statement at the preliminary hearing concerning bond that appellant claimed supported his argument that self-defense was an issue that he should have been apprised of during the plea hearing is without merit since when a defendant is represented by counsel, a trial court is not required by Crim.R. 11(C) to apprise a defendant of affirmative defenses prior to accepting a plea, Reynolds.

Search. State v. Moore, 2022-Ohio-283 | 2nd Appellate District | 02/02/2022 In a conviction by plea of heroin possession, denial of motion to suppress was not error where, during traffic stop, officer found that defendant's license was suspended and that he was not the registered owner of the vehicle he was driving, officer made the decision to tow the vehicle pursuant to the city police department's tow policy and, during inventory search pursuant to the tow policy, officer discovered narcotics and cash, and the tow policy in effect at that time did not require the registered owner of the vehicle to be contacted before towing.

Rape. State v. Smith, 2022-Ohio-269 | Supreme Court of Ohio | 02/02/2022 In a conviction by plea of, inter alia, rape of a child under the age of 13, R.C. 2907.02(A)(1)(b), that the court of appeals has affirmed, the Supreme Court of Ohio reverses, holding that a conviction for rape based on insertion must be supported by evidence that the defendant inserted a body part or object into another and defendant's-mother's instructing her son to do the act to her did not constitute a violation of that statute; however, since there was sufficient evidence for a conviction of gross sexual imposition, R.C. 2907.05(A), a lesser-included offense of rape, the matter is remanded to the trial court to modify conviction and to re-sentence.

Reopening. State v. Young, 2022-Ohio-308 | 8th Appellate District | 02/02/2022 Pro se application to re-open appeal, App.R. 26(B), is denied since untimely filed, App.R. 26(B)(1) and (2)(b), and claim that delay in filing was due, in part, to failure of appellate counsel to provide appellant the record does not constitute good cause for the untimely filing, LaMar.

Evidence. State v. Smith, 2022-Ohio-371 | 4th Appellate District | 02/02/2022 In a conviction of, inter alia, trafficking in heroin, the trial court did not err by admitting trooper's testimony that, during a traffic stop in which one of the occupants attempted to hide marijuana when trooper was about to search him, troopers then found cocaine residue on the rental car passenger seat where

appellant had been sitting and they also discovered heroin in a gap in the back of the driver's seat since the evidence was relevant, Evid.R. 401 and 402, and the probative value was not substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury, Evid.R. 403.

Witnesses. State v. Pittman, 2022-Ohio-300 | 8th Appellate District | 02/03/2022 In a bench conviction of, inter alia, murder, the trial court did not err in granting state's request to call two co-defendants as court's witnesses when it became apparent that the witnesses were not going to abide by their plea agreements to testify truthfully and consistent with a prior statement each had made concerning defendant's involvement in the murder, Evid.R. 611 and 614(A), Crawford.

Preindictment delay. State v. Dickerson, 2022-Ohio-298 | 8th Appellate District | 02/03/2022 In a conviction of, inter alia, rape that allegedly occurred in 1994, the trial court erred in finding that appellant did not incur actual prejudice by a 20-year period of pre-indictment delay since the testimony of the now-deceased driver of the car in which the alleged victim was allegedly kidnapped could have bolstered appellant's defense as to all charges and undermined the state's case concerning the rape by calling into question the issue of consent and the credibility of the alleged victim; remanded for a determination of whether state provided sufficient reason to justify the period of a pre-indictment delay.

Sentencing. State v. Cintron, 2022-Ohio-305 | 8th Appellate District | 02/03/2022 In a conviction by plea of first-degree misdemeanor breaking and entering, R.C. 2911.13(A) and 2923.02, the trial court erred in issuing a community control condition that appellant pay child support since the condition of establishing a child support order does not share a relationship with appellant's misdemeanor offense in this case because the child support condition shares no reasonable link with the circumstances of the criminal conviction in this case, nor is the condition reasonably related to rehabilitating appellant.

Speedy trial. State v. Tutte, 2022-Ohio-303 | 8th Appellate District | 02/03/2022 In an appeal by the state of the trial court's dismissal of indictment of, inter alia, third-degree felony failure to comply for exceeding the R.C. 2945.71 speedy trial time limits, dismissal was error in light of the administrative orders issued by the common pleas court in response to the COVID-19 pandemic and the legislature's passage of bills addressing tolling of deadlines and timeframes, including speedy trial provisions, and the state presented sufficient justification for its grand jury "triage" policy to toll the speedy trial time pursuant to R.C. 2945.72, rendering the filing of the indictment timely.

Preindictment delay. State v. Jenkins, 2022-Ohio-297 | 8th Appellate District | 02/03/2022 In a conviction of, inter alia, rape that allegedly occurred in 1994, the trial court erred in finding that appellant did not incur actual prejudice by a 20-year period of pre-indictment delay since the testimony of the now-deceased driver of the car in which the alleged victim was allegedly kidnapped could have bolstered appellant's defense as to all charges and undermined the state's case concerning the rape by calling into question the issue of consent and the credibility of the alleged victim; remanded for a determination of whether the state provided sufficient reason to justify the period of pre-indictment delay.

Reopening. State v. McCall, 2022-Ohio-383 | 8th Appellate District | 02/07/2022 In a pro se application to re-open appeal, App.R. 26(B), appellate counsel did not provide ineffective assistance by not obtaining appellant's approval before filing the appellate brief and by not arguing issues that appellant wanted assigned as errors in the brief since application was not timely filed by almost five years after the appellate decision and appellant failed to allege sufficient good cause to excuse the delay, App.R. 26(B)(1) and (B)(2)(b) and, moreover, appellant's claims have no merit.

Mandamus. State ex rel. Adams v. Winkler, 2022-Ohio-271 | Supreme Court of Ohio | 02/07/2022 In an appeal of dismissal by the court of appeals of inmate's mandamus action against former trial judge in underlying criminal action to vacate a nunc pro tunc entry imposing consecutive sentences, judgment is affirmed since named respondent is no longer a trial judge and thus cannot provide the relief requested.

Judicial release. State v. Weir, 2022-Ohio-330 | 11th Appellate District | 02/07/2022 Appeal of denial of motion for judicial release is dismissed sua sponte for lack of a final appealable order since the denial of a motion for judicial release cannot affect a "substantial right" as defined in R.C. 2505.02(A) because the trial court has full discretion as to whether to grant or deny judicial release.

Sealing. State v. Evans, 2022-Ohio-341 | 1st Appellate District | 02/07/2022 Grant of application to seal misdemeanor assault conviction was error since appellee is not an "eligible offender" because he has more than one felony conviction, former R.C. 2953.32(A)(1).

Plea. State v. Rupert, 2022-Ohio-329 | 9th Appellate District | 02/07/2022 In a conviction by plea of endangering children, R.C.2919.22(B)(1), (E)(2)(d), imposition of indefinite prison term of a minimum of six years and a maximum of nine years was not error where claim that the trial court failed to advise appellant during the plea colloquy that there is a presumption in favor of a prison term violated the Crim.R. 11 requirement to advise a defendant of the maximum penalty for that offense is without merit, Raymond.

Discovery. State v. Minor, 2022-Ohio-327 | 9th Appellate District | 02/07/2022 In a conviction by plea of OVI, denial of motion to suppress as untimely filed was error where appellant demonstrated good cause for the untimely filing since he did not timely receive the dashcam video evidence that was delayed due to COVID-19 precautions until after the deadline for filing pre-trial motions, and nothing in the record suggests that defense counsel was derelict in his efforts to obtain the discovery in a timely manner.

Reopening. State v. Leyh, 2022-Ohio-292 | Supreme Court of Ohio | 02/08/2022 In a conviction by plea of sexual offenses that was affirmed, the court of appeals erred in denying appellant's App.R. 26(B) application to re-open appeal for ineffective assistance of appellate counsel in not filing a transcript of the trial proceedings where error claimed on direct appeal was that the offenses were required to merge as allied offenses for sentencing, but the court of appeals required under App.R. 26(B)(5) not just a genuine issue of ineffective assistance of appellate counsel, but proof positive of ineffective assistance of appellate counsel; cause is remanded for further proceedings pursuant to App.R. 26(B)(6)-(9).

Private citizen affidavit. In re Affidavit of Helms, 2022-Ohio-293 | Supreme Court of Ohio | 02/08/2022 In a private citizen affidavit action filed in the court of appeals for the initiation of criminal charges against a municipal employee for grand theft, the court of appeals did not err by sua sponte dismissing the appeal since a court of appeals is not a "court of record" as used in R.C. 2935.09(D) for the filing of an affidavit charging an offense "with the clerk of a court of record."

Ineffective assistance. State v. Groves, 2022-Ohio-443 | 4th Appellate District | 02/08/2022 In a conviction of, inter alia, aggravated murder arising out of death of appellant's-mother's infant son, appellant's claim that her trial counsel provided ineffective assistance is without merit since her counsel based his actions on a strategy that appellant and her co-defendant husband explicitly agreed that their counsels employ so appellant could admit culpability for their infant's death, and thus appellant failed to demonstrate prejudice since she did not satisfy her burden to show that a reasonable probability existed that, absent the alleged errors, trial counsel's performance changed the trial's outcome.

Ineffective assistance. State v. Groves, 2022-Ohio-442 | 4th Appellate District | 02/08/2022 In a conviction of, inter alia, murder arising out of death of appellant's-father's infant son, appellant's claim that trial counsel provided ineffective assistance is without merit since counsel based her actions on an underlying strategy that appellant and his co-defendant wife explicitly agreed that their counsels employ so co-defendant wife could admit culpability for their infant's death, and thus appellant failed to demonstrate prejudice since he did not satisfy his burden to show that a reasonable probability existed that, absent the alleged errors, trial counsel's performance changed the trial's outcome; also, the trial court's not providing the jury a R.C. 2923.03(D) accomplice instruction was not plain error.

Appeal. State v. Mills, 2022-Ohio-369 | 5th Appellate District | 02/08/2022 Following a 2007 conviction of drug possession and the trial court's delivery to appellant of statements seeking payment of costs and fees and attempts to collect, the court of appeals dismisses as moot the appeal of denial of 2021 motion to waive or modify appointed counsel fees on suggestion of death of appellant since no motion to substitute a party has been filed, no explanation for the delay was offered and no prediction as to when or if a motion to substitute will be filed was provided.

Reopening. State v. B.C., 2022-Ohio-384 | 8th Appellate District | 02/08/2022 Pro se application to re-open appeal, App.R. 26(B), in a conviction of, inter alia, rape, appellate counsel did not provide ineffective assistance by not raising a claim of a speedy trial violation since the time limit in R.C. 2945.71(C)(2) was not exceeded where, after taking into consideration the time waived, extended or tolled pursuant to the provisions in R.C. 2945.72 by appellant's requests for continuances and the legislative and judicial tolling of speedy trial provisions because of the COVID-19 pandemic.

Post-conviction relief. State v. Wright, 2022-Ohio-366 | 9th Appellate District | 02/09/2022 Following a 2014 conviction of, inter alia, three counts of aggravated robbery that was affirmed, denial of 2019 pro se motion to correct void sentences and/or judgments, treated as a petition for post-conviction relief, was not error where petition was untimely filed, R.C. 2953.21(A)(2), and appellant failed to show any constitutional error that would warrant the exception for an untimely filing, R.C. 2953.23(A); motion is also barred by res judicata since appellant's claims could have been raised in his direct appeal.

Habeas corpus. Stewart v. Collins, 2022-Ohio-324 | Supreme Court of Ohio | 02/09/2022 In an appeal of the court of appeals dismissal of inmate's pro se habeas corpus action against prison warden, judgment is affirmed since relator's claim that his conviction of murder was not a lesser-included offense of aggravated murder and that he therefore was convicted of unindicted offenses is without merit because habeas corpus is not a proper vehicle to challenge convictions allegedly based on the sufficiency of an indictment, due process claims or a challenge to the sufficiency of the evidence.

Lay testimony. State v. Bachtel, 2022-Ohio-361 | 1st Appellate District | 02/09/2022 In a conviction of petty theft, R.C. 2913.02(A)(1), admission of store security employee's testimony that store managers recovered store items from appellant in the store's apprehension room and delivered it to the security employee was not error since it met the lay testimony requirements of Evid.R. 701 where the testimony consisted of inferences based on observed facts, including that the merchandise was sold by the store and matched the merchandise that the security employee witnessed appellant selecting from the store shelves.

Disorderly conduct. State v. Peel, 2022-Ohio-362 | 1st Appellate District | 02/09/2022 In a conviction of three counts of disorderly conduct, R.C. 2917.11(A)(1), the trial court did not err in finding appellant not guilty of the charged offenses of aggravated menacing, but finding him guilty of disorderly conduct as a lesser-included offense of aggravated menacing, R.C. 2903.21(A).

Sealing. State v. K.S., 2022-Ohio-365 | 9th Appellate District | 02/09/2022 Denial of application to seal record of conviction for obstructing justice, R.C. 2921.32(A)(5), a fifth-degree felony, was error since applicant is an eligible offender because a conviction of obstructing justice is not an offense precluded from sealing under R.C. 2953.36(A).

Jury instruction. State v. Parker, 2022-Ohio-377 | 8th Appellate District | 02/10/2022 In a conviction of, inter alia, rape, R.C. 2907.02(A)(2), the trial court did not err by refusing to provide a lesser-included jury instruction on sexual battery, R.C. 2907.03(A)(1) or (A)(2), since appellant testified to a complete defense to the rape charge that the victim consented to his actions, Wilkins.

New trial/Post-conviction relief. State v. Miller, 2022-Ohio-378 | 8th Appellate District | 02/10/2022 Following a 2013 conviction of, inter alia, aggravated murder that was affirmed, denial without a hearing of 2020 Crim.R. 33(A)(6) motion for leave to file a motion for a new trial and a petition for post-conviction relief was not error where motion and petition were filed untimely and the supporting affidavits failed on their face to demonstrate that the appellant was unavoidably prevented from timely discovery of an eyewitness' statement recanting his trial testimony, nor does appellant's actual innocence claim, based on the witness' purported recantation, constitute a constitutional claim nor a substantive ground for post-conviction relief.

Appeal. State v. Nieves, 2022-Ohio-379 | 8th Appellate District | 02/10/2022
In a 2020 conviction by plea of attempted improperly handling firearms in a motor vehicle, R.C. 2923.16(B), and subsequent violation of community control with imposition of a 120-day jail sentence, appeal is dismissed as moot since appellant has served his sentence and only challenges the length of the sentence, rather than the underlying conviction, and thus there is no relief the court of appeals can afford.

Reopening. State v. Barner, 2022-Ohio-432 | 4th Appellate District | 02/10/2022 Pro se application to re-open appeal, App.R. 26(B), is denied since App.R. 26(B) applies only to appeals from the judgment of conviction and sentence and does not provide for the re-opening of an appeal from a petition for post-conviction relief, Loomer.

Habeas corpus. Simmons v. Black, 2022-Ohio-352 | Supreme Court of Ohio | 02/10/2022 In inmate's pro se petition for a writ of habeas corpus against prison warden in which relator alleged that his return to prison for a violation of post-release control (PRC) was invalid because the imposition of PRC was void, writ is denied since parole authority was authorized to imprison relator for violating the terms of his PRC and relator's claim that an omission in the sentencing entry concerning all the PRC elements voided the imposition of PRC is without merit since he had an adequate remedy by way of direct appeal to challenge any error in his sentencing entry, Harper.

Plea. State v. Bond, 2022-Ohio-373 | 8th Appellate District | 02/10/2022
In a conviction by plea after juvenile court bindover of, inter alia, involuntary manslaughter, although the juvenile court's mandatory transfer to the general division court pursuant to R.C. 2152.10 and 2152.12 was not error since the transfer procedures are constitutional, Aalim, the trial court erred following transfer by failing to inform appellant of her right to trial by jury, Crim.R. 11(C)(2); plea is vacated and case is remanded.

Participating in a criminal gang. State v. Nicholson, 2022-Ohio-374 | 8th Appellate District | 02/10/2022
Conviction of participating in a criminal gang, R.C. 2923.42(A), was supported by sufficient evidence where the state established: (1) the existence of a criminal gang; (2) appellant's active participation in the gang through his use of Instagram accounts establishing his affiliation with two criminal gangs; (3) his knowledge that the gang engages in, or has engaged in, a pattern of criminal gang activity through his active involvement in the three shootings for which he was indicted; and (4) his purposeful promotion, furtherance or assistance of, or commission of or engagement in, any criminal conduct by his appearance in numerous social media posts either flashing gang symbols, holding firearms or both.

Self-defense. State v. Gardner, 2022-Ohio-381 | 8th Appellate District | 02/10/2022 In a bench conviction of domestic violence, R.C. 2919.25(A), arising from appellant's physical altercation with her nephew who resided with appellant in her residence, appellant does not dispute that the state produced sufficient evidence establishing all of the elements of domestic violence, and the trial court did not err in rejecting her claim of self-defense since there was evidence presented that appellant was the initial aggressor, and the trial court did not lose its way in making its credibility determinations.

Habeas corpus. State ex rel. Bradford v. Bowen, 2022-Ohio-351 | Supreme Court of Ohio | 02/10/2022 In a pro se petition for a writ of habeas corpus alleging that relator's 2004 convictions are void because relator was 17 years-old at the time of the offenses and was not bound over from a juvenile court, the court of appeals erred in granting summary judgment in favor of respondent by considering respondent's unauthenticated document of relator's birthdate in support of the motion for summary judgment, Civ.R. 56(C); cause is remanded to allow the writ and to require the warden to make a return and for a determination of whether relator was under 18 years-old on the date of the offense.

Costs. State v. Phillips, 2022-Ohio-478 | 4th Appellate District | 02/11/2022
Following a conviction of, inter alia, aggravated murder that was affirmed, the trial court's denial, without providing reasons, of appellant's subsequent motion to vacate and set aside court costs was not error because, since R.C. 2947.23(C) is silent concerning findings, trial courts are not required to make findings when ruling on a motion to waive the payment of court costs; the court discusses split of authority on issue.

Ineffective assistance. State v. Whitehead, 2022-Ohio-479 | 4th Appellate District | 02/11/2022 In a conviction of drug offenses, defense counsel did not provide ineffective assistance (1) in not filing a motion for speedy trial since, after consideration of the appropriate tolling periods, the speedy trial limit had not been exceeded; (2) in not filing a motion to suppress since there was no basis for filing a motion to suppress evidence discovered during a traffic stop where officer had a reasonable suspicion to make the stop, and appellant had no standing to challenge the search of the person driving the vehicle, and (3) in not filing a motion to separate appellant's trial from that of co-defendant since claim is based on mere speculation.

New trial. State v. Harrison, 2022-Ohio-407 | 2nd Appellate District | 02/11/2022 In a conviction of felonious assault and weapon offenses, denial of pro se motion for a new trial was not error where claim that medical records of the person wounded at a drive-thru supported the motion is without merit since appellant's trial counsel had obtained the records prior to trial and those records provided the basis for the defense theory that the victim's wound was self-inflicted, and claim that there was a new witness who would have testified that he was with appellant on the date of the shooting and that he did not observe appellant shoot a gun while at the drive-thru was not new evidence since appellant would have known of that fact before the trial.

Ineffective assistance. State v. Parsittie, 2022-Ohio-415 | 9th Appellate District | 02/14/2022 In a conviction of two counts of domestic violence, R.C. 2919.25(A) and (C), appellant did not receive ineffective assistance of counsel by conceding to the state's recitation of facts in its opening statement, failing to get a ruling on the record on a Crim.R. 29 motion, and failing to object to the trial court calling the victim as the court's witness where appellant failed to demonstrate prejudice and, moreover, counsel's decisions were matters of trial strategy and debatable trial tactics do not establish ineffective assistance of counsel.

Hearsay. State v. Schenck, 2022-Ohio-430 | 12th Appellate District | 02/14/2022
In a conviction of gross sexual imposition, R.C. 2907.05(B), the defense counsel did not provide ineffective assistance by not objecting to officer's

testimony of what victim's mother told him the victim said to her, even if the testimony went beyond officer's investigatory step and constituted hearsay since appellant failed to demonstrate prejudice where it was cumulative and merely substantiated the victim's testimony; also, no ineffective assistance was demonstrated in not subpoenaing the author of a mental health assessment of the victim nor in not making a stronger argument for community control rather than prison where counsel did submit a sentencing memorandum.

Transcript. State v. Bryant, 2022-Ohio-418 | 3rd Appellate District | 02/14/2022 In a bench conviction of trespass, R.C. 2911.21(A)(1), and claim by appellant that her conviction was based on insufficient evidence because she had permission and thus a privilege to enter other's premises, judgment is affirmed since appellant failed to provide a transcript of the trial court proceedings, App.R. 9, and thus the regularity in the proceedings must be presumed and the judgment affirmed.

Judicial release. State v. Lammie, 2022-Ohio-419 | 3rd Appellate District | 02/14/2022 Following a 2020 conviction by plea of drug possession, R.C. 2925.11(A), (C)(1)(b), imposition of a 36-month prison sentence and grant of 2021 motion for judicial release, the trial court did not err in subsequent revocation of judicial release and re-imposition of remainder of prison sentence after appellant pled guilty of OVI and possessing drug paraphernalia and tested positive for the presence of illegal drugs on multiple occasions since the trial court complied with the requirements of due process and Crim.R. 32.3, and appellant admitted to violating his judicial release terms and conditions that was also supported by two criminal convictions prior to revocation.

Speedy trial. State v. Shaffer, 2022-Ohio-421 | 3rd Appellate District | 02/14/2022 In a conviction of assault, appellant's speedy trial rights, R.C. 2945.71 et seq., were not violated where the time to bring appellant to trial was not exceeded based on the calculation of time, including reasonable continuances based on appellant's motions for continuances, motion to suppress, and motion to dismiss and the state's motion for reasonable and necessary continuances, including a continuance due to concerns from the Covid-19 pandemic, and the trial court's sua sponte continuance was due to prosecutor's illness.

Juror misconduct. State v. Pulido, 2022-Ohio-433 | 11th Appellate District | 02/14/2022 In a conviction of, inter alia, rape of a minor, the trial court did not err by denying motion for a new trial due to juror misconduct where two jurors were overheard by an assistant public defender discussing the case outside the courtroom during a break since the trial court assigned the two jurors as alternates and asked the other 12 jurors whether anyone had tried to talk to them about the case or whether they had witnessed anyone discussing the case outside of the courtroom, but none of the jurors indicated that they had, and the trial court sequestered the two alternate jurors from the jury at the start of jury deliberations.

Plea withdrawal. State v. Kirklin, 2022-Ohio-435 | 11th Appellate District | 02/14/2022 Following a 1989 conviction by plea of, inter alia, aggravated murder that was not appealed, the trial court did not err in denying 2021 motion to withdraw plea where appellant argued that trial court failed to comply with Crim.R. 11(C) when accepting his plea and prevented him from entering a valid plea since appellant could have raised his claim on direct appeal, and res judicata bars a further challenge on this ground and, moreover, a 1989 sentencing journal entry contradicts appellant's allegations that his plea colloquy was insufficient.

Plea. State v. Vaught, 2022-Ohio-425 | 12th Appellate District | 02/14/2022 In a conviction by plea of OVI, R.C. 4511.19(A)(1)(a), appellant's claim that his plea was not validly made because the dismissal of the specification to the OVI count should have reduced the offense to a first-degree misdemeanor is without merit since the charged offense is a fourth-degree felony, not because of the specification, but because it is provided for in R.C. 4511.19(G)(1)(d), and the trial court did advise appellant during the plea colloquy that the offense he was pleading to was a fourth-degree felony.

Criminal damaging or endangering. State v. Krowiak, 2022-Ohio-413 | 9th Appellate District | 02/14/2022 In a conviction of criminal damaging or endangering, R.C. 2909.06(A)(2), arising out of the shooting of a firearm toward another's property resulting in damage to that property, appellant's claim that an inherently dangerous instrumentality is different than an inherently dangerous agency is without merit, Widner, nor does R.C. 2909.06(A)(2) conflict with R.C. 2923.162 since the latter is a strict liability offense, and the fact that appellant could have been charged with an offense under R.C. 2923.162 does not require the prosecutor to charge appellant under that statute.

Plea. State v. Benjamin, 2022-Ohio-427 | 12th Appellate District | 02/14/2022 In a conviction by plea of rape and gross sexual imposition (GSI) with a recommended maximum sentencing cap of 12 years, and imposition of a definite consecutive prison sentence of 24 months on the GSI count and a 10-year mandatory minimum sentence on the rape count, plea was validly made since the trial court did inform defendant during the plea colloquy that it could deviate from the cap and potentially impose a 16-year mandatory minimum sentence plus the indefinite sentence on the rape count.

Post-conviction relief. State v. Hamblin, 2022-Ohio-516 | 4th Appellate District | 02/15/2022 Following a 2005 conviction by plea of, inter alia, murder, denial of 2020 pro se motion to vacate void judgment, treated as a petition for post-conviction relief, is affirmed since appellant's non-constitutional claims challenging his sentence are barred by res judicata and the trial court's judgment denying relief on the constitutional claims is modified to reflect that they should have been dismissed for lack of jurisdiction since petition was filed untimely and appellant failed to demonstrate that his untimely petition satisfied the requirements of R.C. 2953.23(A).

Dismissal. State v. Kidd, 2022-Ohio-424 | Supreme Court of Ohio | 02/16/2022 Appeal is dismissed as having been improvidently accepted.

Ineffective assistance. State v. Collins, 2022-Ohio-452 | 1st Appellate District | 02/16/2022 In a conviction by plea of a drug offense and a weapon offense, defense counsel provided ineffective assistance by allowing appellant to plead guilty despite having initially told appellant that he would have to plead no contest in order to challenge the denial of his motion to suppress, but she later allowed appellant to return to

court and enter guilty pleas even though counsel knew appellant's intention was to preserve his right to appeal.

Post-conviction relief. State v. Hunt, 2022-Ohio-458 | 9th Appellate District | 02/16/2022 Following a 2002 conviction by plea of murder and felonious assault, the trial court did not err in denying a 2021 "motion in arrest of judgment pursuant to repeal [of] statute," in which appellant claimed that the murder statute that he was sentenced under had been repealed at the time of his sentencing, treated as an petition for post-conviction relief, was not error where petition was untimely filed, R.C. 2953.21(A)(2)(a), and appellant failed to meet the requirements for the consideration of an untimely petition, R.C. 2953.23(A)(1)(a) and (b).

Sealing. State v. Lively, 2022-Ohio-462 | 5th Appellate District | 02/16/2022 Denial of motion to expunge and seal record of a 1983 conviction of grand theft, R.C. 2913.02, was not error since appellant was statutorily ineligible for the sealing of this record under R.C. 2953.32(A)(1)(a) because, even though the offense that appellant had been convicted of was amended in 1996 to reduce the penalty from a third-degree felony to a fourth-degree felony, the sentencing provisions were not retroactive, Rush, and thus the amendment was not applicable to appellant.

Sentencing. State v. Delvallie, 2022-Ohio-470 | 8th Appellate District | 02/17/2022 In an en banc review of the constitutionality of the Reagan Tokes Law, the court holds that the Law as defined under R.C. 2901.011 is not unconstitutional since its provisions do not violate any separation-of-powers safeguard or due process protections where there has been no demonstration that the imposition of an indefinite term under R.C. 2929.144 and 2929.14 violates any constitutional provision or that the legislature's lack of procedural guidance within R.C. 2967.271(C) and (D) is integral to the entire Reagan Tokes Law.

Plea. State v. Poage, 2022-Ohio-467 | 8th Appellate District | 02/17/2022 In a conviction by plea of sexual battery and intimidation, plea was validly made since the trial court complied with Crim.R. 11(C) by correctly informing defendant of the maximum penalty for sexual battery after initially misstating the penalty and then verifying with defendant that he understood the correct maximum sentence for that offense, and the court was not required to explicitly inform defendant of the total potential sentence he faced since nothing in the record indicates that he would not have pled guilty had the court informed him of the potential cumulative total of the sentences.

Plea. State v. Edwards, 2022-Ohio-465 | 8th Appellate District | 02/17/2022 In a conviction by plea of felony domestic violence in which the trial court did not properly inform defendant in the Crim.R. 11(C) plea colloquy that he was subject to three years of mandatory post-release control, appellant failed to demonstrate he incurred prejudice since he did not demonstrate that he would not have pled guilty had he been correctly informed of the post-release control provision, Dangler.

Right to counsel. Euclid v. Hedge, 2022-Ohio-464 | 8th Appellate District | 02/17/2022 In a bench conviction of first-degree misdemeanor theft in violation of municipal code, the trial court failed to advise defendant of her right to counsel or ensure that her decision to proceed to trial without counsel was knowing, voluntary and intelligent, where although the trial court advised defendant of her right to counsel, the charge against her and the penalties if she were convicted, the court did not confirm whether she understood her right to counsel, and the proper remedy is to vacate the conviction, Ogle; conviction is vacated and cause is remanded.

Search. State v. Jones, 2022-Ohio-561 | 4th Appellate District | 02/18/2022 In a conviction by plea of cocaine possession, denial of motion to suppress was not error where officer had reasonable suspicion to make a traffic stop for window tint and brake light violations and officer's requiring driver to exit vehicle did not constitute an unreasonable search and seizure, and officer's detection of a raw marijuana odor emanating from the vehicle provided probable cause to search the vehicle, resulting in the discovery of cocaine, even if no marijuana was found.

Soliciting/Loitering to engage in solicitation. State v. Wendling, 2022-Ohio-496 | 2nd Appellate District | 02/18/2022 In a conviction for soliciting and loitering to engage in solicitation, the trial court did not err by refusing to give a jury instruction on entrapment where the record demonstrates that appellant initiated the encounter and the subsequent offer where, based on appellant's own testimony, he knew after his first encounter with the undercover officer that she was not his acquaintance from a meeting he had just attended, but he still re-engaged the officer and asked her to go to his home with him and indicated he wanted to engage in sexual relations with her.

Drug offenses. State v. Arnder, 2022-Ohio-481 | 5th Appellate District | 02/18/2022 In a conviction of two counts of aggravated trafficking of drugs, R.C. 2925.03, imposition of maximum sentence was not error where the trial court stated that it considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, with the court specifically identifying that the offense resulted in the death of the person to whom appellant sold the drugs, appellant's criminal record reflected numerous drug offenses and his failure to respond favorably to past sanctions, and appellant demonstrated a pattern of drug and/or alcohol abuse related to the offense.

Post-conviction relief. State v. Brown, 2022-Ohio-519 | 4th Appellate District | 02/18/2022 Following a 2013 conviction of drug offenses that was affirmed, denial of 2020 petition for post-conviction relief was not error since it is a successive and untimely petition and petitioner failed to satisfy the R.C. 2953.23(A)(1)(a) and (b) conditions for the filing of the petition since the appellant's discovery of a newspaper article of a former trial court judge's alleged out-of-court misconduct does not constitute newly-discovered evidence within the meaning of R.C. 2953, Williams, nor did appellant argue that, but for the alleged constitutional error at trial, no reasonable finder of fact would have found him guilty.

Disability

Nursing care. Bacon v. Ohio Dept. of Medicaid, 2021-Ohio-4537 | 12th Appellate District | 12/27/2021 Affirming state department's denial of appellant's request for hours of weekly private duty nursing services on reasoning that the services were not medically necessary and appellant's need for care could be met through homemaker/personal care providers (HPCP) is not error where, inter alia, appellant's claim that nurses are necessary to administer certain medications prescribed on an

Disability (continued)

as-needed basis that requires independent judgment is without merit since R.C. 5123.42 and related regulations authorize HPCP to administer certain prescribed medications, including medications at issue in this case, through gastrostomy and jejunostomy tubes if they have completed certain training and certification.

Medicaid eligibility. Merritt v. Ohio Dept. of Job & Family Servs., 2021-Ohio-4540 | 12th Appellate District | 12/27/2021 Denial of applicant's application for long-term Medicaid benefits until his Qualified Income Trust (QIT) was properly funded was not error since, although a QIT allows an individual whose income is otherwise over the income level to have income excluded when determining Medicaid eligibility, applicant's monthly income exceeded the maximum threshold despite his spousal support payments since Ohio Adm. Code 5160:1-3-03.1(B)(1)(a) provides that available income is determined by a person's gross income before any deductions or exclusions are calculated, and a QIT was required for applicant to be eligible for Medicaid benefits.

Education

Disability. State ex rel. Joyce v. State Teachers Retirement Sys., 2021-Ohio-4279 | 10th Appellate District | 12/07/2021 Teacher's petition for writ of mandamus seeking to compel teachers retirement system to grant disability benefits is denied since physician's reports support retirement system board's determination that teacher was not disabled from an identifiable pathology, imaging and physical examination supported conclusion that teacher was not mentally or physically incapacitated, and physician's ultimate conclusion is not inconsistent merely because he noted inconsistent medical evidence in his review of teacher's records.

Disability benefits. State ex rel. Parker v. State Teachers Retirement Sys. Bd., 2021-Ohio-4391 | 10th Appellate District | 12/14/2021 Denial of teacher's petition for writ of mandamus seeking to compel teachers retirement board to reapprove his application for disability benefits is affirmed since there was some evidence that teacher was capable of working one full day per year as a substitute teacher, even though board's independent medical examiner found that teacher's disability prevented him from returning to his original position; teacher's benefits that were related to his original position had been terminated after he engaged in short-term retirement system-covered employment at a different school, which he left, and he later worked one day in retirement system-covered employment as a substitute teacher, the employment involved in the instant case.

Real party in interest. Hope Academy v. White Hat Mgt., L.L.C., 2022-Ohio-178 | 10th Appellate District | 01/25/2022 In community schools' ongoing litigation against businesses that manage schools where the Ohio Department of Education (ODE), which was named a defendant in the original complaint, filed counterclaims against the schools for the return of federal grant funds allegedly disbursed in violation of grant terms and for the return of federal grant funds and state funds allegedly disbursed in violation of the schools' fiduciary duties, the trial court erred in finding that the ODE was not a real party in interest since assurances made by the schools in exchange for federal funds constitutes a contract with ODE pursuant to Civ.R. 17(A), which was made for the benefit of the U.S. Department of Education, and the ODE also maintained its state funding claim.

Contract non-renewal. Akron Edn. Assn. v. Akron City School Dist. Bd. of Edn., 2022-Ohio-275 | 9th Appellate District | 02/02/2022 In education association's grievance on behalf of teacher against school district board alleging violation of collective bargaining agreement (CBA) in not renewing teacher's supplemental contract as coach, trial court did not err in vacating arbitration award to teacher in which the arbitrator found that the board acted in an arbitrary and capricious manner, even though the board did not violate the CBA; the supplemental contract was automatically non-renewed at end of term without action by the board, and the arbitrator exceeded her powers by adding terms that directly conflicted with the non-renewal provision.

Elections and Campaign Finance

Referendum petition/Laches. State ex rel. Salem Citizens for Action v. Columbiana Cty. Bd. of Elections, 2021-Ohio-4659 | 7th Appellate District | 12/27/2021 In relators' action, related to collection of city income taxes, seeking certification of a referendum petition for placement on next available general election ballot, petition for writ of mandamus is dismissed where the ordinance authorizing collection of taxes through a regional agency was administrative in nature and not subject to a referendum petition, relators did not file their petition until 38 days after the referendum was disallowed by the Secretary of State, breaking board of elections tie, and because of the unreasonable delay, the mandamus action is barred by the doctrine of laches.

Redistricting. League of Women Voters of Ohio v. Ohio Redistricting Comm., 2022-Ohio-65 | Supreme Court of Ohio | 01/12/2022 In original action by relator pursuant to Ohio Const. Art. XI, Sec. 9, challenging the Ohio Redistricting Commission's General Assembly-voting redistricting plan that was adopted on September 16, 2021, the Ohio Supreme Court holds that the plan is invalid for not meeting the standards in Ohio Const., Art. XI, Secs. 6(A) and 6(B) for proportionality and for drawing a plan that does not favor a political party; pursuant to Art. XI, Sec. 9(B), the Commission is ordered to be reconstituted under Art. XI, Sec. 1 and to adopt a General Assembly-district plan in conformity with the Ohio Constitution within 10 days.

Redistricting. Adams v. DeWine, 2022-Ohio-89 | Supreme Court of Ohio | 01/14/2022 In original action by relator under Ohio Const., Art. XIX, Sec. 3(A), challenging the General Assembly's congressional-district plan mandated by amendment to Ohio Const., Art. XIX, the Ohio Supreme Court declares that the plan is invalid because it does not comply with Art. XIX, Secs. 1(C)(3)(a) and (b) and because the plan unduly favors the Republican Party, unduly disfavors the Democratic Party, and unduly splits three counties; the Court orders the General Assembly to pass a new congressional-district plan as required by Art. XIX, Sec. 3(B)(1) that complies with the Ohio Constitution and is not dictated by partisan considerations.

Redistricting. League of Women Voters of Ohio v. Ohio Redistricting Comm., 2022-Ohio-342 | Supreme Court of Ohio | 02/07/2022 In original action by relator pursuant to Ohio Const. Art. XI, Sec. 9, challenging the Ohio Redistricting Commission's General Assembly-voting redistricting plan that was adopted on January 22, 2022 after the Ohio

Supreme Court ordered the Commission to adopt a new plan, the Court holds that the revised plan is invalid for not meeting the standards in Ohio Const., Art. XI, Secs. 6(A) and 6(B) requiring proportionality and a plan that does not favor a political party; the Commission is ordered to be reconstituted under Art. XI, Sec. 1, and to adopt a district plan in conformity with the Ohio Constitution within 10 days.

Environmental and Natural Resources

EPA order/Appeal. DiCillo v. Geauga Cty. Bd. of Commrs., 2022-Ohio-333 | 11th Appellate District | 02/07/2022
Following county board of commissioners' resolution approving plans and tentative assessments for constructing sanitary sewers pursuant to an EPA order of necessity under R.C. 6117.34 issued after finding that water was contaminated, the trial court erred in ruling in favor of property owner on his statutory appeal from the resolution since the court exceeded its jurisdiction in its EPA order of necessity review, which was limited to consideration of the boundary and apportionment of the assessment, by actually examining the necessity of the project and ordering, inter alia, that the board conduct additional testing.

EPA order/Appeal. In re Chardon Twp. Wastewater Treatment Plant & Sewer Project, 2022-Ohio-332 | 11th Appellate District | 02/07/2022 Following county board of commissioners' resolution approving plans and tentative assessments for constructing sanitary sewers pursuant to an EPA order of necessity under R.C. 6117.34 issued after finding that water was contaminated, the trial court erred in ruling in favor of property owner on her statutory appeal from the resolution since the court exceeded its jurisdiction in its EPA order of necessity review, which was limited to consideration of the boundary and apportionment of the assessment, by actually examining the necessity of the project and ordering, inter alia, that the board conduct additional testing.

Flood regulation notices. State ex rel. Solid Rock Ministries Internatl. v. Monroe, 2022-Ohio-431 | 12th Appellate District | 02/14/2022
Granting religious organization's petition for a writ of mandamus to compel the city to issue violation notices to business on neighboring property for non-compliance with flood regulations was not error where floodplain administrator failed to inspect floodway to determine whether there were violations of city ordinance, limestone riprap and earthen berm on neighboring property were not authorized for approved use in floodway, ordinance prohibits any use contrary to floodplain development permit, and a trespass action would not provide an adequate remedy.

Oil and gas interests. Peppertree Farms, L.L.C. v. Thonen, 2022-Ohio-395 | Supreme Court of Ohio | 02/15/2022 In action to quiet title involving grantors' conveyance of surface rights while excepting part of the oil and gas rights, the oil and gas rights were in existence and owned by the grantors at the time of conveyance so the grantors held a fee simple interest that was inheritable, and words of inheritance were not required to retain more than a life estate in the excepted interests in the oil and gas; the Dormant Mineral Act and the Marketable Title Act provide alternative, independent mechanisms to reunite a surface estate with its severed mineral interest.

Oil and gas interests/Marketable Title Act. Peppertree Farms, L.L.C. v. Thonen, 2022-Ohio-396 | Supreme Court of Ohio | 02/15/2022 In oil and gas interest dispute, the will at issue is not a recorded title transaction under the Marketable Title Act, R.C. 5301.47, et seq. since the will did not include a specific devise of the owner's share of the interest and did not contain a residuary clause, so it did not affect title to the oil and gas interest, and the interest passed to owner's heirs as if by intestate succession, constituting a title transaction; however, the transaction was not recorded within 40 years of the effective date of title, so neither the recorded will nor the unrecorded transfer of the oil and gas interest through intestacy is a recorded title transaction preventing that interest from being extinguished by the Marketable Title Act.

Estate Planning, Trust and Probate

Anti-lapse statute. Diller v. Diller, 2021-Ohio-4252 | 3rd Appellate District | 12/06/2021 In plaintiff-co-executor's action seeking a declaratory judgment and construction of her uncle-decedent's will, asserting that decedent intended his gift of a farm to his brother to lapse in the event his brother died before decedent, which did occur, the trial court erred in ruling that the anti-lapse statute, R.C. 2107.52(A)(3), applied to the gift to the brother since the gift was to an individual rather than a class of persons and thus did not qualify as a devise, and a devise was required to create a substitute gift in favor of brother's children under R.C. 2107.52(B)(2)(a).

Will. Estate of Todd v. Flahive, 2021-Ohio-4419 | 5th Appellate District | 12/14/2021 Denial of decedent's brother's application to probate decedent's will was not error where the purpose of the court's R.C. 2107.24 hearing was to determine if a submitted document was decedent's last will and testament and brother failed to explain the existence of three documents with decedent's original signature, thereby failing to establish that a will existed under the statutory requirements; as well, brother's handwriting expert was less credible than estate's expert, who testified that none of the presented documents had been signed by decedent.

Trustee/Hearing/Notice. In re Roudebush Trust, 2021-Ohio-4557 | 7th Appellate District | 12/27/2021
In beneficiaries' action disputing court's appointment of successor trustee, the trial court erred in holding a hearing without giving appointed trustee and beneficiaries notice and an opportunity to be heard where beneficiaries had unanimously consented to appointment of successor trustee, their counsel reasonably checked online docket, which showed incorrect date for hearing, and the judge's phone call to counsel suggesting a possible date for hearing did not constitute notice.

Disclaimer/Laches. Clark v. Beyoglides, 2021-Ohio-4588 | 2nd Appellate District | 12/29/2021 In beneficiaries' action seeking city's acknowledgement of their disclaimers of decedent's real property, prompted by the city's issuance of nuisance abatement notices to beneficiaries, the trial court's summary judgment in favor of beneficiaries is affirmed since the probate court correctly analyzed the effect of the disclaimers, and estate administrator's defense of laches is without merit since there was no evidence of unjustifiable delay on beneficiaries' part and no reason to preclude the disclaimer.

Estate Planning, Trust and Probate (continued)

Settlement agreement. In re Estate of Millstein, 2021-Ohio-4610 | 8th Appellate District | 12/30/2021
In curator's appeal of administration of decedent's son's estate, judgment finding agreement in settlement of son's estate precluded decedent from asserting property rights as beneficiary of estate is affirmed where settlement agreement precluded proceedings that were adversarial in nature, decedent voluntarily entered settlement agreement and initially waived objection to inventory, and even though settlement agreement arose from unrelated trust litigation, it was executed to prevent decedent from wasting resources through continued and frivolous filings.

Disinterment/Discovery. In re Disinterment of Glass, 2022-Ohio-28 | 2nd Appellate District | 01/07/2022
In applications for disinterment of remains, R.C. 517.23 and 517.24, in which cemetery filed a motion to quash a subpoena and notice to take Civ.R. 30(B)(5) depositions of cemetery's employees, the trial court did not err in denying the motion since Civ.R. 45 specifically requires non-parties to provide information in litigation and cemetery did not demonstrate that the discovery requests created an undue burden or were protected by privilege; R.C. 2108.83 or 2108.84 provide procedures relating to the original disposition of a decedent rather than to disinterment, which is involved in the instant case.

Family Law and Domestic Relations

Adult adoption. In re Adoption of T.N.N., 2021-Ohio-4111 | 12th Appellate District | 11/22/2021
Denial of grandmother's petition to adopt her adult granddaughter was error where granddaughter established a kinship caregiver relationship with petitioner as a minor and she consented to being adopted by petitioner, and therefore requirements under R.C. 3107.02(B)(3) were satisfied and underlying reasoning for why petition was filed is not relevant.

Disabled child/Trust. McCloskey v. McCloskey, 2021-Ohio-4158 | 2nd Appellate District | 11/24/2021
In a divorce action in which husband failed to comply with divorce decree requiring him to place assets in trust for disabled adult child prior to his death, the trial court did not err in modifying the decree to clarify that assets to be contributed to the trust included all assets in which parties had an equitable interest at the time of death and not merely their probate estates, and use of second trust created by wife would ensure compliance with decree while not imposing unintended restrictions regarding residual beneficiaries.

Spousal support/Cohabitation. Mengel v. Mengel, 2021-Ohio-4166 | 5th Appellate District | 11/24/2021
Terminating husband's spousal support obligation on reasoning that wife was in a cohabitation relationship with her boyfriend is affirmed since the divorce decree provides for termination in the event of cohabitation and wife has resided in a home with her boyfriend for several years, they share the master bedroom, they have a romantic and sexual relationship, they share day-to-day living expenses, they travel together, and other people view wife and her boyfriend as a couple.

Civil protection order. B.L.L. v. M.T., 2021-Ohio-4300 | 7th Appellate District | 11/24/2021 Issuance of domestic violence civil protection order against petitioner's former boyfriend for acts of verbal and physical violence was not error on reasoning that order was supported by competent, credible evidence of physical injury to petitioner and of boyfriend's repeated phone calls and text messages that subjected petitioner to expletive-laden tirades, and the magistrate was in the best position to judge the credibility of witnesses and weight of evidence, R.C. 3113.31, Civ.R. 65.1.

Marital property sale. Kowalkowski-Tippett v. Tippett, 2021-Ohio-4220 | 10th Appellate District | 12/02/2021
In a divorce action in which wife sold marital property while husband was incarcerated, the trial court erred in finding that wife engaged in financial misconduct when she signed a power of attorney on husband's behalf and sold the property since wife believed she had authority under a previous POA to sign at husband's direction, the mortgage on the property went unpaid while both parties were incarcerated, the property was sold to avoid incurring a deficiency judgment, and wife's profit from sale was not at expense of husband.

Property division/Spousal support. Kirkpatrick v. Kirkpatrick, 2021-Ohio-4260 | 11th Appellate District | 12/06/2021 In a divorce action in which husband disputed distribution of property, the trial court did not err in its division of property and award of spousal support to wife where, although wife indisputably committed significant financial misconduct which led to loss of funds and personal property, the court took action to compensate husband for the misconduct, balancing wife's need for income with the impact of her actions on husband, R.C. 3105.18(C).

Custody. Corson v. Corson, 2021-Ohio-4253 | 3rd Appellate District | 12/06/2021 In divorce action, trial court did not err in denying husband's motion for shared parenting and in designating wife as children's residential parent and legal custodian since evidence showed, inter alia, that children are thriving in their home environment with mother, that children suffer from chronic health issues that will need follow-up by the parents, and that mother was insightful in her observations of the children and spoke without self-interest, while shared parenting would create a situation that encourages each party to bully the other into acquiescence and will leave the children's needs unmet, R.C. 3109.04.

Property division. Gerhardstein v. Gerhardstein, 2021-Ohio-4341 | 6th Appellate District | 12/10/2021
In dissolution of marriage where wife claimed entitlement to funds because husband had devalued the sale price of the marital home, the trial court did not err in its allocation of property where home buyers bought the home as-is, parties chose to accept offer on home regardless of buyers' reason for offering lower price and, other than buyers' statement, wife did not provide evidence as to the value of damage to home and its impact on purchase price.

Custody. Robinson v. Robinson, 2021-Ohio-4421 | 4th Appellate District | 12/10/2021 In a divorce action in which wife sought reallocation of parental rights and responsibilities after she obtained a civil protection order against husband on children's behalf, the trial court did not err in ordering continuation of shared parenting plan where, although there was a serious issue and altercation, there was not a change of circumstances with regard to either parents or children, and guardian ad litem's report was fully considered, but recommendation of parenting schedule was not reasonable in light of parties' financial resources and distance between homes.

Civil protection order. K.T. v. J.S., 2021-Ohio-4350 | 9th Appellate District | 12/13/2021 In a case in which appellee was granted a civil protection order and appellant filed an objection to the magistrate's decision, the trial court erred in overruling appellant's objection on reasoning that the objection was not specific since the court incorrectly analyzed appellant's objection pursuant to the standard contained in Civ.R. 53, rather than Civ.R. 65.1, which governs the issuance of civil stalking protection orders.

Custody. Calhoun v. Calhoun, 2021-Ohio-4551 | 7th Appellate District | 12/13/2021 In a dissolution of marriage action where husband sought reallocation of parental rights and responsibilities, the trial court did not err in finding change in circumstances warranting change in custody of children where wife's drug use had clearly increased since dissolution, her boyfriend overdosed at her apartment while children were present, she moved several times and had multiple phone numbers, and children get along well with husband's family members who help with childcare, R.C. 3109.04.

Spousal support. Falah v. Falah, 2021-Ohio-4348 | 9th Appellate District | 12/13/2021 In a divorce action in which defendant-husband sought termination of spousal support, the trial court did not err in its nunc pro tunc final judgment entry in continuing spousal support where, although wife attempted to re-marry, which would have terminated spousal support under the parties' divorce decree, she learned that her supposed new husband was already married, rendering the marriage void ab initio, and defendant-husband did not present sufficient evidence to prove that wife entered into a religious marriage even though her legal re-marriage was void.

Adoption. In re P.C., 2021-Ohio-4418 | 5th Appellate District | 12/15/2021 In adoption case, trial court did not err in ruling that the consent of child's biological father was not required for stepfather to adopt child since biological father failed to have more than de minimis contact with child for one year without just cause, R.C. 3107.07(A), even though mother obtained a no-visitation order and also did not inform father of child's new address since, inter alia, father could have obtained a court order for visitation, he did not attend any of child's events at school, he could have contacted his own mother to connect with child, and he could have contacted the stepfather to arrange to connect with child.

Frivolous conduct/Notice. Greenhouse v. Anderson, 2021-Ohio-4454 | 10th Appellate District | 12/16/2021 In divorce action in which husband sought allocation of litigation fees against wife's previously terminated counsel, trial court did not err in granting husband's motion for fees and in finding that counsel engaged in frivolous conduct, R.C. 2323.51, since counsel had constructive notice of hearing through court's online docket but declined to oppose the motion for fees, and the trial court's waiver of enforcement of Loc.R. 13(D) rule by setting the matter for oral arguments is presumed to be valid where counsel failed to provide a transcript or to bring the issue before the court.

Visitation. In re Flynn, 2021-Ohio-4456 | 10th Appellate District | 12/16/2021 In a dissolution action in which the parties agreed to a shared parenting plan, trial court did not err in denying father's aunt's motion for visitation/companionship rights with the parties' minor child where, inter alia, aunt had not seen child in more than two years, father had a conflict with his aunt, and the parties' agreement provided that mother is not permitted to provide the child visitation with any of father's family, R.C. 3109.051(D).

Fraud. Roubanes v. Roubanes, 2021-Ohio-4493 | 10th Appellate District | 12/21/2021 In divorce action in which wife appeals trial court's order setting, inter alia, wife's child support obligations, judgment is affirmed since wife's argument that husband committed fraud is without merit where the court's initial finding of fraud relating to income information provided by husband was reversed by the court of appeals and the trial court's rejection of wife's other claims of husband's fraud were upheld on appeal.

Adoption. In re Adoption of H.P., 2021-Ohio-4567 | 3rd Appellate District | 12/27/2021 In petition for adoption of child, the trial court erred in denying biological father's motion to intervene where, although father failed to timely register as putative father pursuant to R.C. 3107.062, the juvenile court had concurrent jurisdiction to hear paternity case even though adoption petition was filed first, and father's paternity was established prior to the consent hearing, giving him status as legal father with the right to have the trial court determine whether consent was necessary pursuant to R.C. 3107.07(A).

Property division. Miller v. Miller, 2021-Ohio-4573 | 10th Appellate District | 12/28/2021 In divorce action in which husband-business owner disputed division of marital property, the trial court erred in relying only on business valuation provided by wife's expert where income imputed to husband was based on average rates of compensation paid nationwide rather than the base salary he paid himself, the court did not explain the flaws it saw in wife's expert's analysis or provide a sense as to overall magnitude of flaws it identified, and finding wife's expert more credible than husband's opposing expert did not fully complete necessary evaluation, R.C. 3119.01.

Marriage termination date. Sargsyan v. Martirosyan, 2021-Ohio-4576 | 10th Appellate District | 12/28/2021 In divorce action in which wife contested division of marital property, trial court did not err in its application of a de facto termination date of marriage where, although parties separated while living in another country and wife alleged that the marriage was irretrievably broken, they lived together in marital residence and used support payments wife received from husband to purchase and maintain home, and wife failed to show that she was prejudiced by the later termination of the marriage date, R.C. 3105.171(A)(2).

Property division. Picciano v. Picciano, 2021-Ohio-4603 | 5th Appellate District | 12/29/2021 In divorce action, the trial court did not err in ruling that two annuities were marital property since wife had the donative intent to give half of the annuities to her husband, wife deposited the money into joint account and made husband joint owner of the annuities, and husband's acceptance of the assets is evidenced by his continued use of the funds in the joint account, his signing of the applications for the annuities, and his testimony that he believed the annuities were marital property, subject to equal division.

Appeal. J.L.C. v. J.V.C., 2021-Ohio-4607 | 8th Appellate District | 12/30/2021 On reconsideration of dismissal of appeal for lack of a final appealable order in divorce action in which the trial court quashed mother's subpoena for

non-party witness-children's school counselor, appeal is again dismissed where, although divorce qualifies as a special proceeding as defined in R.C. 2505.02, the order did not affect a substantial right because mother will not be denied effective relief in the future in the absence of immediate review of order, and therefore the order is not final and appealable.

Spousal support. Iacona v. Iacona, 2021-Ohio-4616 | 11th Appellate District | 12/30/2021 In a divorce action, the trial court did not err in denying husband's motion to modify spousal support and in ordering him to pay attorney fees where husband retired at earliest eligibility without a sound economic reason and was found to be voluntarily underemployed, and therefore there was no substantial change in circumstances to warrant modification of support, R.C. 3105.18.

Jurisdiction/Service. Adamski v. Adamski, 2022-Ohio-32 | 6th Appellate District | 01/07/2022 In wife's petition for domestic violence civil protection order against husband for threatening incidents involving herself and children, the trial court did not err in issuing the order since the court had subject matter jurisdiction pursuant to R.C. 3113.31(B) where personal jurisdiction over husband was established under the R.C. 2307.382 long-arm statute because alleged tortious conduct took place within the state, and husband's failure to open properly-served envelope does not defeat service and was not excusable neglect under Civ.R. 60(B).

Civil protection order. R.S. v. J.H., 2022-Ohio-40 | 5th Appellate District | 01/07/2022 In petitioner's action seeking a domestic violence civil protection order against respondent-former paramour for an altercation at the time respondent moved out of petitioner's home, the trial court did not err in issuing the order since petitioner demonstrated fear of imminent physical harm based on respondent's actions on the date in question, as well as a previous history of violence, and violence had occurred when parties attended the same professional events, so petitioner's fears were reasonable even though respondent had moved to another state, R.C. 3113.31.

Custody. Romohr v. Singer, 2022-Ohio-50 | 12th Appellate District | 01/10/2022 In dissolution of marriage action in which father sought a change in custody, the trial court did not err in awarding legal custody of children to father where testimony of expert regarding parental alienation was not untruthful or biased against mother, mother engaged in pattern of behavior that caused alienation between children and father, wishes of children to remain with mother were considered but greater weight was given to mother's acts of manipulation and alienation, and father was found to be more likely to facilitate court-approved parenting time, R.C. 3109.04.

Custody/Jurisdiction. J.A.N. v. J.M.N., 2022-Ohio-41 | 5th Appellate District | 01/10/2022 In divorce action in which mother relocated to another state, there was a neglect and dependency proceeding in the other state, and maternal aunt sought custody of child in instant case, trial court erred in finding that it was without jurisdiction to consider aunt's motion since R.C. 2151.23 does not address which state has subject matter jurisdiction to determine custody under the Uniform Child Custody Jurisdiction and Enforcement Act, and although R.C. 3127.16 provides that the court must relinquish continuing exclusive jurisdiction when there is a determination that parents and child do not reside in a state, evidence shows that father lives in Ohio and continues to pay child support.

Personal property/Partition. Mundy v. Golightly, 2022-Ohio-83 | 8th Appellate District | 01/13/2022 In plaintiff's action seeking partition of dog acquired while co-habiting with defendant, the trial court did not err in granting defendant's motion for judgment on the pleadings since partition of personal property is not allowed where joint ownership was acquired solely by means of co-habitation, and plaintiff failed to allege that defendant's ownership interest was based on anything beyond co-habitation and payment of maintenance costs for dog, Civ.R. 12(C).

Custody/Civil protection order. A.G. v. Gain, 2022-Ohio-95 | 9th Appellate District | 01/18/2022 In divorce action in which husband filed a motion to show cause when wife denied him parenting time, the trial court did not err in finding wife in contempt where wife's argument that she could not be held in contempt because her petition for a civil protection order against husband was partially unresolved and the ex parte order remained in effect until its expiration date is without merit since the court resolved the petition by using Form 10.01, which permits the court to define the parameters of a protection order; also, wife's argument that she feared for child's safety was considered by the court but did not provide justification for withholding child from husband.

Child support/Settlement agreement. Burns v. Crouse, 2022-Ohio-145 | 2nd Appellate District | 01/21/2022 In a divorce action in which wife sought termination of parties' shared parenting plan with respect to one child, resulting in an agreed journal entry, which wife subsequently challenged as not being accurate regarding child support, the trial court did not err in its determination of wife's child support obligation since husband's lump sum payment for expenses did not prejudice wife, even though agreement intended sum to be paid by credited child support, and wife's counsel agreed to split parental worksheet which used data submitted by both parties.

Property division/Spousal support/Evidence. Blanchard v. Blanchard, 2022-Ohio-162 | 11th Appellate District | 01/24/2022 In divorce action in which wife disputed division of property, trial court's division of assets and liabilities and order of spousal support is affirmed where report prepared by husband's expert was properly admitted because the parties stipulated to the facts on which expert relied, there was no evidence that designation of the ceremonial marriage date, rather than an earlier de facto date, as the date of marriage would be inequitable, and husband's purchase of luxury vehicles without wife's consent was not financial misconduct, R.C. 3105.171(A)(2).

Custody. Guajardo v. Guajardo, 2022-Ohio-209 | 2nd Appellate District | 01/28/2022 In divorce action, granting father's motion for change of custody and awarding him parental rights and responsibilities for the parties' two children is affirmed since there was a change in circumstances regarding father's parenting time and children's best interests where mother's move to another county with a different school schedule effectively cut father's parenting time in half and where father was able to help one child's weight issues and the other child's speech issues, R.C. 3109.04(E).

Custody/Evidence. Dobie v. Dobie, 2022-Ohio-237 | 3rd Appellate District | 01/31/2022 In divorce action in which the parties disagreed over which school district the children should attend, the trial court did not commit plain error in ordering children to attend school in the district of husband's residence without allowing wife to cross-examine the guardian ad litem about his report since wife did not object or insist on calling guardian ad litem as witness, and the quality of school district was not the court's focus, but rather the school decision went to the amount of parenting time for the parties and the family support network available for the children when they were not in school.

Prenuptial agreement. Heimann v. Heimann, 2022-Ohio-241 | 3rd Appellate District | 01/31/2022
In a divorce action, the trial court did not err in enforcing the parties' prenuptial agreement since the parties entered into the agreement freely without fraud, duress, coercion or overreaching where, inter alia, the parties actively engaged in negotiations related to the agreement for 18 months, evidence showed that there were arms-length negotiations between the parties' attorneys, husband was not present when wife executed the agreement, and wife did not ask to delay the signing to allow for her attorney's presence.

Custody. Roberts v. Roberts, 2022-Ohio-284 | 2nd Appellate District | 02/02/2022 In a divorce action in which mother sought change of custody, the trial court did not err in finding no change of circumstances warranting change of custody since there was no evidence that husband was addicted to drugs or alcohol, wife's allegations of abuse were either known at time of divorce, were not substantiated or involved determination of witness credibility, and evidence did not support a finding that it was in children's best interest for wife to be named legal custodian.

Grandparent visitation. Reeves v. Tait, 2022-Ohio-393 | 4th Appellate District | 02/02/2022 Denial of grandmother's petition for visitation with grandchild was not error since R.C. 3109.12(A), allowing grandparents to request visitation if a child is born to an unmarried mother, does not apply because child's mother was married at time she gave birth, and even though she divorced father after child's birth and her second husband adopted child, she was not considered unmarried just because she was not married to child's adoptive father at the time of child's birth; therefore, petitioner lacked standing under the statute to seek visitation.

Spousal support/Property division. Smith v. Smith, 2022-Ohio-299 | 8th Appellate District | 02/03/2022
In divorce action in which wife disputed amount of husband's spousal support obligation and valuation of marital property, judgment is affirmed since husband's reported income included income he did not receive as minority shareholder in businesses, parties experienced a moderate standard of living in spite of husband's reported income, length of spousal support was equitable because wife was awarded value of properties and accounts which gave her resources to be self-supporting, and property division was equitable pursuant to R.C. 3105.17 and 3105.18.

Adoption. In re Adoption of C.L.D., 2022-Ohio-368 | 4th Appellate District | 02/04/2022 In stepfather's petition to adopt child, the trial court did not err in finding that father's consent was unnecessary since father failed to provide more than de minimis contact with child without justifiable cause because he had accurate contact information for child and neither mother nor petitioner significantly interfered with his communication with child, R.C. 3107.07(A).

Custody/Agreed entry. Reynolds v. Reynolds, 2022-Ohio-334 | 11th Appellate District | 02/07/2022
In divorce action in which husband challenged modification of parenting time and utilization of reunification counseling with child, the trial court did not err in approving parties' agreed judgment entry even though husband did not sign it since he acknowledged that the agreement was read into the record under oath, so the agreement constituted a binding contract; an explicit best interest finding in the entry is not required under R.C. 3109.051.

Civil protection order/Objections. Groeschen v. Johns, 2022-Ohio-359 | 1st Appellate District | 02/09/2022
In petitioner's action seeking a civil stalking protection order against respondent-former boyfriend, trial court's judgment granting the order is affirmed where respondent failed to timely file objections to order prior to filing appeal, Civ.R. 65.1, and therefore he waived arguments challenging the court's adoption of the magistrate's order.

Property division/Spousal support. O'Neal v. O'Neal, 2022-Ohio-372 | 8th Appellate District | 02/10/2022
In divorce action in which wife disputed determinations concerning marital assets and spousal support, the trial court erred in imposing spousal support obligation on wife to make payments to husband where husband committed financial misconduct by dissipating his entire retirement account, some of which was marital property, and wife is entitled to compensation for his misconduct regarding eviction from and foreclosure of real property, R.C. 3105.171(E)(4).

Adoption. In re Adoption of A.K., 2022-Ohio-350 | Supreme Court of Ohio | 02/10/2022 In grandparents' adoption action, the court of appeals' ruling is affirmed that a parent's right to have to give consent to the adoption of his or her child is not extinguished under R.C. 3107.07(A), even though the parent did not have more than de minimis contact with the minor child during the statutory period, where the parent was acting in compliance with a no-contact order prohibiting all communication and contact with the child; for the adoption proceedings in this case to go forward, the father's consent is required.

Child support. Page v. Page, 2022-Ohio-411 | 2nd Appellate District | 02/11/2022 In dissolution of marriage action in which husband sought reduction in child support, the trial court erred in declining to find that husband was voluntarily underemployed since reduction in his income was significant, and the court did not give its reasons for failing to impute income to him; also, making support modification retroactive to date husband filed motion, rather than date he changed jobs, was error.

Custody/Child support. Ayers v. Ayers, 2022-Ohio-403 | 6th Appellate District | 02/11/2022 In a divorce action in which husband disputed the allocation of parental rights and responsibilities, the trial court did not err in denying husband's motion for shared parenting since every factor under R.C. 3109.04(F) was analyzed to reach custody decision in best interests of the children, factors under R.C. 3119.01(C)(17) were considered in calculating husband's imputed income, and factors under R.C. 3119.23 did not support granting his requested deviation of child support.

Family Law and Domestic Relations (continued)

Property division. Hunt v. Hunt, 2022-Ohio-412 | 9th Appellate District | 02/14/2022 In a divorce action in which both parties disputed findings regarding the marital home, the trial court erred in its division of marital property since the court did not use evidence of the home's value at the time the marriage ended and did not instruct parties to submit evidence on the matter; because down payment on the home was wife's separate property, husband should not have been awarded offset of loan borrowed from his retirement account.

Spousal support/Arrearage. Biats v. Biats, 2022-Ohio-438 | 11th Appellate District | 02/14/2022 In a divorce action in which husband disputed amount owed for spousal support, the trial court did not err in finding husband in contempt for failure to pay arrearage owed for support where, although husband made large payment to wife's divorce attorney, there was no evidence that the payment was ever received by the support enforcement agency, amount paid likely satisfied other judgments rendered by final divorce decree, and husband failed to dispute prior judgment entries listing amount of arrearage owed or provide evidence that he mistakenly believed no arrearage existed.

Civil protection order/Proper party. Divincenzo v. Divincenzo, 2022-Ohio-434 | 11th Appellate District | 02/14/2022 In a divorce action in which wife filed petition for domestic violence civil protection order for injuries child sustained while in husband's care, the trial court erred in granting a protection order designating wife as protected party where wife's concerns were focused on child and she was never in danger of domestic violence as defined under R.C. 3113.31(A)(1).

Magistrate's decision/Transcript/Appeal. Bucher v. Bucher, 2022-Ohio-429 | 12th Appellate District | 02/14/2022 In a divorce action in which husband objected to various aspects of magistrate's findings, the trial court did not err in adopting the magistrate's decision as final judgment without further consideration of objections where husband failed to provide with his objections a transcript or affidavit of evidence as required by Civ.R. 53(D)(3)(b)(iii), and therefore that evidence is precluded from consideration on appeal.

Civil protection order. J.F. v. A.F., 2022-Ohio-441 | 5th Appellate District | 02/14/2022 Issuance of domestic violence civil protection order against respondent was supported by sufficient evidence, R.C. 3113.31, where, inter alia, petitioner testified that she felt very nervous after seeing respondent's car at her place of work, which was largely vacant due to the pandemic, and very concerned after she learned that respondent had driven by babysitter's home since respondent had previously stalked and physically assaulted petitioner, which resulted in his arrest for domestic violence, and respondent testified that he had been hospitalized with homicidal ideations against petitioner, demonstrating that petitioner's fear of physical harm or mental distress were reasonable.

Custody/Change of circumstances. In re Dissolution of the Marriage of Craft, 2022-Ohio-493 | 2nd Appellate District | 02/18/2022 In dissolution of marriage in which wife was designated residential parent, trial court erred in denying husband's motion for custody of children where wife moved to another city without notifying the court of intent to do so, she changed children's school during the school year, she interfered with husband's parenting time, and because change in circumstances was indisputably established, R.C. 3109.04(E)(1)(a), further analysis must be conducted to determine if reallocation of parental rights is in children's best interest under R.C. 3109.04(F)(1).

Insurance

Business owner's/Pandemic closure. Nail Nook, Inc. v. Hiscox Ins. Co. Inc., 2021-Ohio-4211 | 8th Appellate District | 12/02/2021 In insured's breach of contract action against insurer for denying coverage for losses incurred during closure resulting from pandemic state of emergency, the trial court did not err in granting judgment on the pleadings to insurer since coverage under the policy excludes loss caused directly or indirectly by a virus, and the virus did not cause direct physical loss of or damage to property to allow coverage for suspension of operations.

All risk/Pandemic closure. Sanzo Ents., L.L.C. v. Erie Ins. Exchange, 2021-Ohio-4268 | 5th Appellate District | 12/07/2021 In a breach of contract action by insured-sporting goods store against insurer for denial of coverage for business losses during government-ordered closure during the pandemic, the trial court did not err in granting insurer's motion for judgment on the pleadings since, although the policy covered loss of property or damage to property, insured failed to show that it had suffered a physical loss or an alteration of its insured property to trigger coverage under the policy.

Liability/Personal injury/Intent. Krewina v. United Specialty Ins. Co., 2021-Ohio-4425 | 1st Appellate District | 12/17/2021 In action by plaintiff-group care facility resident's action seeking a judgment declaring that facility's commercial general liability insurance policy covered his judgment against facility resulting from attack on plaintiff by a deranged resident, the trial court erred in dismissing the complaint since, although the policy excludes coverage for bodily injury arising out of assault or battery, no actual assault or battery occurred because attacker's mental condition rendered him incapable of forming the intent necessary to commit those acts, which require intent, R.C. 2903.34(A)(1).

Opioid abatement fund. Cincinnati Ins. Co. v. Discount Drug Mart, Inc., 2021-Ohio-4604 | 8th Appellate District | 12/30/2021 In insurer's action seeking a declaratory judgment that it has no duty to defend or indemnify insured for claims alleging insured's role in opioid epidemic, summary judgment in favor of insured was not error where payment of money into abatement fund for underlying claims for absolute public nuisance falls within scope of damages under policies, part of the claimed damages are for services related to bodily injury, and insurer's general liability policies arguably or potentially cover the underlying claims.

Coverage/Summary judgment. Timberlake Apartments, L.L.C. v. Underwriters at Lloyds London, 2022-Ohio-29 | 2nd Appellate District | 01/07/2022 In dispute about coverage for wind and hail damage under a policy covering physical loss or damage where insured filed a petition for appointment of a neutral umpire, the trial court erred in granting insurer a summary judgment after converting its motion to dismiss to one for summary judgment without notifying insured since insured was not given an opportunity to respond to insurer's evidentiary materials on which the court relied, and the court seemingly credited insurer's argument that insured had not satisfied all prerequisites to pursuing legal action against insurer.

Professional liability. Ohio Bar Liab. Ins. Co. v. Wallace, 2022-Ohio-131 | 8th Appellate District | 01/20/2022
In action by professional liability insurer to declare no coverage for law firm that represented students/families against schools under the Individuals with Disabilities Education Act (IDEA) where the schools prevailed and sought attorney fees from firm, alleging that firm's due process complaints were frivolous, unreasonable or without foundation, the trial court did not err in granting judgment on the pleadings and summary judgment to insurer since the schools' claims for attorney fees were asserted under a statute designed to prevent frivolous conduct, and there is no insurance coverage for claims arising from an award of attorney fees under this section of the IDEA.

Policy breach/Reinstatement. Washington v. Am. Gen. Life Ins. Co., 2022-Ohio-339 | 1st Appellate District | 02/07/2022 In insured's action against insurer alleging breach of life insurance policy for incorrectly claiming that her policy had lapsed, judgment for insurer was not error where, although insurer failed to accurately credit insured's payments, insured suffered no damages because insurer fully reinstated the policy; insured failed to mitigate costs by resuming payments after the policy was reinstated and therefore cannot recover the cost of replacement insurance.

Homeowner's/Limitations. White v. Grange Ins. Co., 2022-Ohio-497 | 2nd Appellate District | 02/18/2022
Dismissal of insured-homeowner's action against insurer claiming failure to pay for replacement of entire roof after a portion of roof was damaged in windstorm is affirmed since insured did not file complaint within time period specified in the policy, the limitations time began to run when damage occurred rather than when the roof was replaced, and the transaction between the parties was not a consumer transaction pursuant to R.C. 1345.01.

Juvenile

Custody. In re R.F., 2021-Ohio-4118 | 12th Appellate District | 11/22/2021
Award of permanent custody of children to agency was not error where mother's mental health issues rendered her incapable of providing care that children needed to thrive, mother's substantial progress on case plan objectives did not sufficiently remedy concerns that led to children's removal, and no viable relative placement options were found for children, while children are bonded with foster family, R.C. 2151.414.

Custody. In re B.H., 2021-Ohio-4152 | 9th Appellate District | 11/24/2021
Award of permanent custody of children to agency was not error where mother failed to object to any case plan and did not preserve for appeal issues based on alleged deficiencies in case plan, she did not argue or demonstrate that she was prejudiced by alleged deficiencies in case plan, and the court consistently found that agency used reasonable efforts to prevent children's removal from home, R.C. 2151.419(A)(1).

Custody. In re C.W., 2021-Ohio-4156 | 9th Appellate District | 11/24/2021
Award of permanent custody of children to agency is affirmed where, inter alia, mother's argument that the agency did not use reasonable reunification efforts, R.C. 2151.419(A)(1), is without merit since the juvenile court consistently found that the agency had used reasonable efforts to prevent the children's removal from their home and at no time did mother or father challenge those findings; also, mother's citation of federal provisions that only implicate federal funding for state child welfare agencies is misplaced.

Custody. In re D.B., 2021-Ohio-4170 | 8th Appellate District | 11/24/2021
Award of permanent custody of child to agency was in child's best interest where, inter alia, parents had substance abuse issues, police were called to home on two occasions for domestic violence, family's apartment was uninhabitable since it was filthy and there was no real bed, and child was at risk of being unenrolled from school due to a significant number of unexcused absences, while child was doing well in foster care, R.C. 2151.414(D).

Bindover. State v. Echols, 2021-Ohio-4193 | 10th Appellate District | 11/30/2021 In a conviction of murder, two counts of attempted murder and two counts of felonious assault after bindover for murder of one individual and felonious assault of another individual, the general division had jurisdiction to convict appellant of additional counts following a grand jury indictment after bindover since the additional charges were for offenses that were part of the same case and arose from a common nucleus of operative fact prior to those cases being indicted in the common pleas court, R.C. 2152.12(A)(1)(a)(i).

Delinquency. In re A.K., 2021-Ohio-4199 | 1st Appellate District | 12/01/2021
In an adjudication of juvenile as delinquent of adult drug possession, although the juvenile court erred by admitting an anonymous tip made to a school security individual that led to juvenile's arrest since prosecutor conceded the purpose of introducing the anonymous tip was not simply to describe investigatory conduct, but for juvenile's "knowledge of the pills in her purse," error was harmless where the juvenile court made clear that it based its judgment on an officer's testimony that the juvenile told him that she obtained the pills from someone on the street, not her grandfather as she told school security.

Custody. Wilburn v. Ferguson, 2021-Ohio-4256 | 4th Appellate District | 12/01/2021 In action by father, whose paternity was established by a DNA test, seeking shared parenting of child, the trial court did not err in expanding father's parenting time and lowering his child support payments where child is bonded with father and extended family members, father can readily accommodate spending additional time with child, and father was entitled to a deviation based on his increased parenting time and the manner in which other expenses were split, R.C. 3109.051.

Custody. In re A.N., 2021-Ohio-4214 | 8th Appellate District | 12/02/2021
Award of permanent custody of child to agency was not error where father failed to substantially remedy conditions causing child to be removed from home, he has chronic mental illness and chemical dependency that prevent him from providing an adequate permanent home for child, he failed to regularly support or communicate with child, and he repeatedly had inappropriate conversations with child that affect child's mental health, while child is thriving in his foster placement and desires to remain there, R.C. 2151.414.

Delinquency. In re R.N.F., 2021-Ohio-4442 | 4th Appellate District | 12/02/2021 Adjudication of juvenile as delinquent of adult disorderly conduct, R.C. 2917.11(A)(1), was not error where the state presented sufficient evidence that appellant was the aggressor in an argument with her mother through the testimony of appellant's mother and grandmother and, since appellant failed to request findings of fact and conclusions of law pursuant to Civ.R.

52, the appellate court presumes the trial court applied the self-defense law correctly and, moreover, there was record evidence juvenile engaged in fighting or violent or turbulent conduct initiating the conflict, R.C. 2901.05(B)(1).

Custody/Res judicata. In re B.F., 2021-Ohio-4251 | 3rd Appellate District | 12/06/2021 In award of permanent custody of dependent child to agency, parents' challenge to trial court's reasonable-efforts findings in four judgment entries, on reasoning that the agency should have done more to prevent child's removal from their home, is without merit since the trial court's reasonable-efforts findings either preceded or were contained within the trial court's judgment entries of adjudication and disposition and those findings could have been challenged in a timely appeal, so res judicata bars further litigation of those issues.

Custody. In re B.G., 2021-Ohio-4250 | 3rd Appellate District | 12/06/2021
Award of permanent custody of child to agency was not error where evidence showed that parents failed continuously and repeatedly to substantially remedy conditions causing child to be placed outside the home, that they have intellectual disabilities that prevent them from taking proper care of child, that they completely disregarded necessary parenting education and assessment of mental health or substance abuse issues, and that they demonstrated a lack of commitment by failing to regularly support or visit child, R.C. 2151.414.

Custody. In re J.H., 2021-Ohio-4283 | 9th Appellate District | 12/08/2021
Award of permanent custody of dependent child to agency was not error where, although restrictions due to pandemic prevented mother from visiting child for a few months, she had only minimal interaction with child when visits resumed, and agency did not violate case plan by declining to provide family counseling since providing that service was conditioned on recommendation of counselors, who did not recommend it, R.C. 2151.414.

Delinquency/Restitution. In re A.B., 2021-Ohio-4273 | 1st Appellate District | 12/08/2021 In an adjudication of juvenile as delinquent by plea of adult felonious assault, imposition of restitution in the amount that victim's mother testified victim received bills for supported the amount reflected in the medical bills as the actual amount owed.

Custody. In re N.M., 2021-Ohio-4275 | 1st Appellate District | 12/08/2021
Award of permanent custody of dependent and/or abused children to agency was not error where mother had unstable housing and income, she was unable to address her substance abuse and mental health problems, older children expressed that they did not want to live with or speak with mother, and children were in need of a legally secure placement, R.C. 2151.414.

Custody. In re R.D.W., 2021-Ohio-4305 | 8th Appellate District | 12/09/2021
Award of permanent custody of neglected children to agency was not error where mother's selections for potential custodian were unable to take children and neither of them progressed to the point where detailed investigation was warranted, temporary custody order could not be extended under R.C. 2151.353(G), and mother's chemical dependency rendered her unable to provide an adequate permanent home for children, R.C. 2151.414.

Bindover. State v. L.A.B., 2021-Ohio-4323 | 10th Appellate District | 12/09/2021 In a delinquency action for, inter alia, adult aggravated robbery in which the state's motion for bindover was granted and appellant pled to two counts of aggravated robbery, the juvenile court's determination of amenability was not error where the court considered the factors in R.C. 2152.12(D) and (E), and other relevant factors, stated the reasons for transfer on the record and in the order of transfer, R.C. 2152.12(I) and Juv.R. 30(G), and the court of appeals concludes that the juvenile court's finding that the factors in favor of transfer outweighed the factors against transfer is amply supported by the record.

Custody. In re B.S., 2021-Ohio-4319 | 8th Appellate District | 12/09/2021
Award of permanent custody of children to agency was not error where mother failed to engage with children or agency for lengthy periods of time, she did not participate in any services or work on her case plan, her contacts with children escalated negative behaviors, and there was sufficient evidence that permanent custody was in children's best interests, R.C. 2151.414; also, lack of children's expressed wishes for custody did not require appointment of counsel for them.

Custody. In re R.M., 2021-Ohio-4378 | 5th Appellate District | 12/09/2021
Award of permanent custody of child to agency was not error since child was bonded with his foster-to-adopt family where he lived with his two siblings and foster parents are equipped to provide therapeutic interventions for his special needs, while mother completed her case plan but continued to struggle to care for child without intervention, and although mother was bonded with child, she was unable to remedy conditions that caused him to be placed outside her care, R.C. 2151.414.

Serious Youth Offender. In re J.C., 2021-Ohio-4313 | 8th Appellate District | 12/09/2021 Adjudication of delinquency by admission of adult burglary and subsequent violation of the serious youth offender (SYO) portion of the delinquency adjudication following supervised release, imposition of the SYO dispositional sentence was not error where the SYO sentence was invoked pursuant to R.C. 2152.14(E), and the juvenile portion of the sentence was not terminated solely based on appellant's arrest and detention on the new felony charges.

Custody. In re R.D.W., 2021-Ohio-4304 | 8th Appellate District | 12/09/2021
Award of permanent custody of children to agency was not error where father failed to establish paternity, he is unable to provide a safe and stable environment for children, he failed to engage with agency's substance abuse and anger management referrals, and he was inconsistent with visitation despite facilitation of options for communication with children, while children have positive bond with current foster family, R.C. 2151.414.

Custody. In re A.T., 2021-Ohio-4306 | 8th Appellate District | 12/09/2021
Award of permanent custody of child to agency was error where mother took significant steps toward completing all of her case plan objectives and services, she completed her housing and anger management objectives, she benefitted from substance abuse services and completed treatment program, she consistently participated in visitation, engaging with child during visits, and she demonstrated commitment toward child by ending her relationship with father and completing domestic violence services, R.C. 2151.414.

Custody. In re S.P., 2021-Ohio-4335 | 2nd Appellate District | 12/10/2021 Award of legal custody of dependent child to maternal great-grandparents was not error where child was bonded with great-grandparents and was thriving in their care, father did not have his own residence and was staying with friends, he had steady employment and income, but failed to pay child support or rent, he failed to undergo mental health treatment, and his visitation with child was inconsistent, R.C. 2151.353(F).

Custody. In re D.C.J., 2021-Ohio-4395 | 5th Appellate District | 12/10/2021 Award of permanent custody of child to agency was not error since child is bonded with foster family and foster family is promoting bond between child and his siblings who are in other placements, while mother has not made efforts to build bond with child, she had her parental rights involuntarily terminated with respect to child's siblings, and she failed to show she could provide a legally secure permanent placement to care for child, R.C. 2151.414.

Custody/Court order. Lucas v. Byers, 2021-Ohio-4373 | 11th Appellate District | 12/13/2021 In father's action requesting allocation of parental rights and responsibilities, the trial court did not err in denying mother's motion to show cause alleging that father should be held in contempt for failing to comply with original court order regarding parenting schedule where the court had issued a nunc pro tunc order that was controlling and any technical violation of the original court order, which father violated for failure to comply with visitation, was not a violation of the court's actual order.

Bindover. State v. Zarlengo, 2021-Ohio-4631 | 7th Appellate District | 12/15/2021 Following mandatory bindover of juvenile on multiple counts of adult aggravated robbery and conviction by plea to the multiple counts, challenge to the state's probable cause evidence as insufficient to prove appellant's identity as a participant in robberies and as lacking credibility is without merit since the probable cause arguments are non-jurisdictional and are waived by a guilty plea, Smith.

Custody. Miller v. Rhoads, 2021-Ohio-4485 | 4th Appellate District | 12/15/2021 Award of legal custody of child to paternal grandmother and dismissal of complaint for legal custody filed by friend of child's mother was not error where, although mother's friend who had cared for child from birth presented favorable evidence in support of her complaint, she is employed outside the home and grandmother is not, she had previously denied grandmother contact with child, and she testified to the possibility of relocating from area, so the judgment is supported by competent, credible evidence, R.C. 3109.04.

Custody. In re K.J., 2021-Ohio-4413 | 9th Appellate District | 12/15/2021 Award of legal custody of abused and dependent child to maternal grandparents was error since agency did not use reasonable efforts to reunify child with father by failing to add him to the case plan in a timely manner to allow him a reasonable time to comply with his case plan objectives before granting legal custody to grandparents; R.C. 2151.412(A) clearly places the burden on the agency to create a case plan including all necessary parties.

Dependent child. In re A.K., 2021-Ohio-4513 | 4th Appellate District | 12/16/2021 Adjudication of child as dependent and placing child in temporary custody of agency is affirmed, even though the trial court did not journalize a case plan as part of its dispositional order, since, inter alia, mother agreed that she had been following a case plan that the agency prepared, but had not yet filed with the court, she agreed that the lack of a case plan did not cause her prejudice, and mother did not object to the lack of a case plan at any point before the adjudicatory or dispositional hearing, R.C. 2151.412(D) and Juv.R. 43(F).

Counsel. State ex rel. Mcie v. Forsthoefel, 2021-Ohio-4483 | 5th Appellate District | 12/17/2021 Petition for writ of mandamus filed by legal custodian of minors to compel appointment of a guardian ad litem under Civ.R. 17(B), asserting that the minors are unrepresented in underlying case, is dismissed for failure to state a claim since petitioner "represents" minors for purposes of Civ.R. 17(B), and concerning petitioner's motion in the trial court for appointment of counsel, the magistrate gave petitioner time to retain counsel for the minors and, if that does not occur, the underlying case will be dismissed and minors can refile their complaint after attaining the age of 18.

Custody. In re H.P., 2021-Ohio-4446 | 6th Appellate District | 12/17/2021 In father's action seeking modification of parental rights and responsibilities, the trial court did not err in denying request for parenting time where there was evidence that father had a long-standing history of unaddressed mental health issues and he failed to show that his mental health issues had been stabilized for the period required by the magistrate, while evidence showed that the child was fearful of the father and had not had visitation with him in several years, and the court weighed relevant statutory factors under R.C. 3109.051(D).

Dependent child/Judicial notice. In re Lu.B., 2021-Ohio-4479 | 4th Appellate District | 12/17/2021 Adjudication of child as being dependent is affirmed where any error by the court in taking judicial notice of another case in which child's siblings were adjudicated as dependent is harmless, Evid.R. 201, and evidence showed that the child's home had been condemned and was in deplorable condition, including presence of feces, trash, piles of dishes and a cracked doorway through which rodents could enter.

Delinquency. In re N.D., 2021-Ohio-4506 | 5th Appellate District | 12/17/2021 In a 2017 adjudication of juvenile as delinquent of multiple counts of adult gross sexual imposition and classification as a Tier II juvenile sex offender registrant that was modified in 2020 to a classification as a Tier I juvenile sex offender registrant, denial of appellant's 2020 motion for declassification pursuant to R.C. 2152.84 was not error since R.C. 2152.84 does not violate his right to procedural due process because juvenile has no substantive due process right to removal of the Tier I classification at the R.C. 2152.84 completion-of-disposition hearing, and his classification remains subject to review pursuant to R.C. 2152.85.

Custody. In re K.R., 2021-Ohio-4474 | 3rd Appellate District | 12/20/2021 Award of permanent custody of children to agency is affirmed where mother's claim that COVID-19 restrictions prevented her from working her case plan and deprived her of due process and equal protection is without merit since mother had approximately two years prior to the implementation of the COVID-19 restrictions to make progress on her case plan but she chose not to do so, she asked to be removed from the case plan because she did not wish to work it, and when she did complete an assessment shortly before the

restrictions were imposed, she made no attempt to follow through with the recommendations.

Custody. In re C.P., 2021-Ohio-4504 | 2nd Appellate District | 12/22/2021 Award of permanent custody of abused and dependent children to agency was in children's best interest where, inter alia, both children tested positive for drugs when they were born, their home was cluttered and had electric cords and wires lying loose, there was no bed mattress, father failed to comply with instructions to make the home safe for the children, and father made threats of violence against the prosecutor, while the children were doing well in foster care and were bonded to their foster family, R.C. 2151.414(D).

Custody. In re E.A.J.R., 2021-Ohio-4505 | 2nd Appellate District | 12/22/2021 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, parents did not have safe, stable housing, father had a drug overdose, attempted suicide and was unable to engage in treatment, and mother engaged in self-harm in front of children, she did not practice safe sleep with child and fed younger child improper food, while children were doing well in foster care and foster mother wanted to adopt them, R.C. 2151.414(D).

Dependent child. In re L.T., 2021-Ohio-4499 | 9th Appellate District | 12/22/2021 Adjudication of child as dependent is affirmed since, inter alia, mother had no safe and stable home to which she could have brought child after birth, she lost her appropriate housing with grandmother due to mother's drug use, and mother had not secured another appropriate placement for child because the couple whom mother hoped would care for child had not agreed to become caregivers for child, R.C. 2151.04(C).

Custody. In re A.F., 2021-Ohio-4519 | 8th Appellate District | 12/23/2021 Award of permanent custody of one dependent and one abused and neglected child to agency is in children's best interest where there is evidence that, inter alia, mother lacks stable and independent housing and is unable to care for or meet the needs of the children, she has mental health conditions, two of her other children were adjudicated neglected in part due to mother's lack of stable housing, and one child expressed no interest in returning to mother and the other child was opposed to returning to mother, while children were well cared for and bonded with their foster family.

Bindover/Sentencing. State v. Carlock, 2021-Ohio-4550 | 7th Appellate District | 12/23/2021 Following bindover of juvenile and conviction by plea of, inter alia, murder, imposition of concurrent and consecutive prison sentences of life with parole eligibility after 15 years was not plain error where the trial court considered appellant's youth as a mitigating factor before imposing a life sentence, Fuell.

Guardian ad litem's fees. In re C.P., 2021-Ohio-4522 | 8th Appellate District | 12/23/2021 In proceedings against minor child for criminal offenses, trial court erred in denying guardian ad litem's motion for extraordinary fees where the court provided no explanation as to why it declined to award guardian any extraordinary fees, child's appointed counsel's motion for extraordinary fees was granted, and although a hearing was not required, guardian asserts that no hearing was held, even though the journal entry states that a hearing on a motion for extraordinary fees was held.

Procedendo/Prohibition. Summit Cty. Children Servs. v. Stucki, 2021-Ohio-4584 | 9th Appellate District | 12/29/2021 Agency's petition for writ of procedendo against judge is dismissed where there is no evidence that the judge has refused to render a judgment or has unnecessarily delayed proceeding to judgment; with respect to a writ of prohibition, if not granted, the trial court's order would compel the agency to expend significant public funds to contract with an evaluator to conduct a clinical assessment of the children involved in the case or risk a contempt finding against agency's executive director, but appealing a contempt order is an adequate remedy at law, so a writ of prohibition will not issue.

Bindover. In re E.S., 2021-Ohio-4606 | 8th Appellate District | 12/30/2021 In an appeal by state in juvenile proceeding of denial of state's motion to transfer jurisdiction to general division, the state failed to present sufficient credible evidence that victim's death was proximately caused by juvenile's commission of felonious charges stated in the arrest warrant where the juvenile court's conclusion was based on its determination that the state's evidence that a gun found with juvenile's DNA on it that had four others' DNA on it, but the court of appeals holds that was not credible evidence that juvenile was involved in the shooting since it was not shown that it was the bullet from that gun that caused victim's death, In re D.R.

Custody. In re A.B., 2021-Ohio-4613 | 8th Appellate District | 12/30/2021 Award of legal custody of children to father was not error where mother made significant progress on her case plan, but failed to complete plan objectives, children expressed a desire to remain with father, and the record fails to support mother's argument that father did not support her involvement with children, R.C. 2151.353.

Custody. In re E.N., 2022-Ohio-116 | 4th Appellate District | 01/07/2022 Award of legal custody of dependent child to child's paternal grandmother was in child's best interest where, inter alia, both mother and father indicated that they were not capable of parenting the child and mother was in a mental hospital, placing child with grandmother would honor parents' wishes, grandmother would be able to keep child with her while caring for older relatives, grandmother would allow parents supervised visitation with child, and grandmother lived close to parents, giving the parents a more realistic chance to reunify with the child, R.C. 3109.04(F)(1).

Custody. In re M.H., 2022-Ohio-48 | 12th Appellate District | 01/10/2022 Award of permanent custody of children to agency is affirmed since mother failed to timely object to magistrate's decision, parents' home is unsanitary and barely habitable, mother was given ample opportunities to rectify home situation, but failed to do so, and mother and father have history of eviction and of an inability to pay bills even with agency assistance, while children are well-bonded with their aunt and uncle as foster parents, R.C. 2151.414.

Custody. In re O.W., 2022-Ohio-42 | 5th Appellate District | 01/10/2022 Award of permanent custody of child to agency was not error where mother failed to substantially comply with case plan objectives, she did not actively engage in substance abuse treatment, and she has a criminal history with charges pending, while child is too young to keep himself safe if mother is under the influence of drugs, child

is bonded with foster family and other children in home, and the minimal bond between mother and child is outweighed by the benefits of permanency, R.C. 2151.414.

Dependent child/Custody. In re D.W., 2022-Ohio-66 | 9th Appellate District | 01/12/2022 Adjudication of child as dependent and award of temporary custody to agency was not error since mother had history of involving herself in abusive relationships and allowed abuser to be around children, in violation of a no contact order, older children were removed from her custody after she left them unsupervised, she continued to use poor judgment regarding children and failed to demonstrate that she could safely care for them alone, and she used drugs while pregnant with child, R.C. 2151.04.

Custody. In re I.V., 2022-Ohio-118 | 5th Appellate District | 01/14/2022
Award of legal custody of neglected and dependent children to former fiancé of mother's deceased half-brother was not an abuse of discretion where, inter alia, children's mother agreed to place her children with former fiancé under the safety plan, former fiancé lives closer to mother, which would aid with visitations if granted in the future, and mother has not lost custody of her children, so reunification with mother is still a possibility, R.C. 2151.353(A)(3).

Custody/Dependent child. In re A.A.R., 2022-Ohio-93 | 2nd Appellate District | 01/14/2022 Award to agency of temporary custody of children and adjudication that children were dependent was supported by evidence showing that there was illegal substance abuse in or around the children where, inter alia, drug paraphernalia was visible, both parents tested positive on drug screens and also refused to take drug screens, and mother tested positive for methamphetamine and amphetamine on the date the parties' newborn child was injured in their home, leading a reasonable person to believe that mother was under the influence when her child was seriously injured by a falling door.

Custody. In re W.H., 2022-Ohio-121 | 5th Appellate District | 01/19/2022
Award of permanent custody of children to agency was not error where parents failed to maintain housing and employment, mother failed to follow case plan or to comply with medication program for mental health, and father failed to complete parenting course and failed to resolve legal issues regarding protection order resulting from domestic violence, while children do not want contact with mother or father, and no appropriate kinship options were identified, R.C. 2151.414.

Custody. In re L.T., 2022-Ohio-114 | 9th Appellate District | 01/19/2022
Award of permanent custody of dependent child to agency was not error where mother has untreated mental health issues and is unable to provide for child's basic needs, her issues prevent her from trusting people and the systems in place to assist her, she refused referrals for housing and food access and made little progress on her case plan, and child is aggressive and acts out during visits with mother, while child is comfortable in grandparents' custody, R.C. 2151.414.

Custody. In re K.C., 2022-Ohio-113 | 9th Appellate District | 01/19/2022
Award of permanent custody of children to agency is affirmed where, after each hearing that resulted in removal of children from mother's custody, the agency made reasonable efforts to prevent continued removal of children or to make it possible for them to safely return home, and mother failed to object or move to set aside the reasonable efforts determinations, thereby forfeiting her challenge on appeal, R.C. 2151.419(A)(1).

Custody. In re R.L., 2022-Ohio-115 | 9th Appellate District | 01/19/2022
Award of legal custody of child to mother and termination of agency's protective supervision is affirmed where father failed to show that his trial counsel's performance prejudiced him or resulted in judgment that would otherwise not have been supported, and evidence supported limiting father's visitation with child.

Custody. In re D.P., 2022-Ohio-135 | 8th Appellate District | 01/20/2022
Award of permanent custody of child to agency is affirmed where a reasonable-efforts determination was not required pursuant to R.C. 2151.353(A)(4) because the record shows that the determination was made earlier in proceedings, father did not show that he was able to provide for severe medical needs of child, he failed to complete his case plan, and he is still in re-entry phase after being released from prison, while child requires permanency and a safe and secure environment and foster mother is willing to allow father to remain in child's life, R.C. 2151.414.

Bindover. State v. Ellis, 2022-Ohio-147 | 2nd Appellate District | 01/21/2022
In a conviction by plea of murder and attempted murder following juvenile court bindover, although the juvenile court did not err by not explaining appellant's right to waive a second mental examination regarding her amenability to juvenile rehabilitation, the juvenile court did err in the bindover by failing to consider reports favorable to appellant that had been submitted by a court-appointed expert and a guardian ad litem, R.C. 2152.12(C).

Custody. In re L.C., 2022-Ohio-183 | 9th Appellate District | 01/26/2022
Award of legal custody of dependent child to older siblings' paternal grandmother was not error where mother failed to comply with required mental health assessment or treatment, she did not engage in recommended substance abuse treatment, and she is unable to provide a stable home for child, while child is bonded with custodian and siblings living in home, and custodian is likely to facilitate visitation between mother and child, R.C. 2151.415, 3109.04.

Dependent child/Custody/Evidence. In re Z.H., 2022-Ohio-184 | 9th Appellate District | 01/26/2022
Adjudication of child as dependent and award of temporary custody to agency is affirmed where mother did not demonstrate prejudicial error in the admission of the child's medical records, and admission of court records from legal custody case involving mother's older child and criminal cases involving some of mother's prior drug convictions did not violate Evid.R. 404(B); also, a finding of dependency does not require proof that mother was willfully at fault in creating dependency situation, R.C. 2151.04.

Custody. In re V.G., 2022-Ohio-191 | 8th Appellate District | 01/27/2022
Award of permanent custody of abused and neglected child to agency was not error where, inter alia, parents failed to comply with case plan services, father was unable to establish housing independent from mother, he did not establish that he was a safe and sober caregiver, and he demonstrated a lack of commitment toward child by failing to support or communicate with her, while child has extensive special needs and requires permanency, she is thriving in her foster home and foster mother is in the medical profession, R.C. 2151.414.

Custody. In re O.C., 2022-Ohio-190 | 8th Appellate District | 01/27/2022
Award of permanent custody of dependent child to agency was error where guardian ad litem filed a motion for permanent custody in opposition to agency's wishes, the court's findings for best interest factors were based on testimony from foster parents and guardians ad litem and largely ignored professionals' overwhelming evidence that did not support the court's findings, most of the guardians' recommendations were based on mother's intellectual limitations, and mother had been providing safe and nurturing environment for child and would continue to do so, R.C. 2151.414.

Delinquency. In re Z.M., 2022-Ohio-194 | 8th Appellate District | 01/27/2022
Following an adjudication of delinquency for adult kidnapping and two counts of gross sexual imposition, the juvenile court did not abuse its discretion by not amending appellant's juvenile-offender registration where, although some factors supported amending appellant's registration, other factors supported the court's decision, including the seriousness of the offenses, victim's young age, appellant's position of trust over the victim, the breadth of appellant's pattern of abuse and the ongoing emotional and physiological harm suffered by the victim and her family.

Custody. In re A.D., 2022-Ohio-232 | 6th Appellate District | 01/27/2022
Award of permanent custody of abused and/or dependent children to agency was not error where mother stopped engaging in treatment for her mental health issues, she did not ensure that children were going to school, she was unable to provide adequate permanent housing for children, and her attitude demonstrated a lack of commitment to compliance with recommended mental health treatment for herself and children, R.C. 2151.414.

Custody. In re T.T., 2022-Ohio-218 | 5th Appellate District | 01/28/2022
Award of legal custody of dependent children to non-relative kinship provider was not error where mother's motion to extend temporary custody was not in the best interest of the children because she did not comply with the case plan, she abused drugs and failed to attend treatment, she had no employment or housing, and limited parenting time awarded to mother was neither vague nor too restrictive and was conditioned on mother's behavior, R.C. 2151.415.

Custody. In re L.M., 2022-Ohio-238 | 3rd Appellate District | 01/31/2022
Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, mother stipulated to the dependency of the children, there was evidence that maternal grandfather smoked marijuana in front of the children, that the home was infested with mice and roaches, and that children had tested positive for cocaine while residing in the home; while the children had been placed with a foster family for two years, they developed a bond with the family, they were well adjusted and happy in their foster placement, and the foster parents are willing to adopt the children, R.C. 2151.414.

Custody. In re S.A., 2022-Ohio-265 | 5th Appellate District | 01/31/2022
Award of permanent custody of dependent and neglected child to agency was not error where mother failed to establish completion of her case plan, she had ongoing issues with substance abuse and mental health, which prevented her from providing a home for child, and she has a pending criminal felony case, while child is doing extremely well in her foster home, R.C. 2151.414.

Delinquency. In re C.M., 2022-Ohio-240 | 3rd Appellate District | 01/31/2022
Adjudication of juvenile as delinquent of adult aggravated robbery, R.C. 2911.01(A)(1), met the sufficiency and weight of evidence standards, and claim that the only witness at trial who identified him as one of the individuals who committed the aggravated robbery was improperly compelled to testify is without merit since the judge and prosecutor simply warning witness of the consequences of perjury or contempt does not violate a defendant's due process rights.

Custody. In re A.P., 2022-Ohio-276 | 9th Appellate District | 02/02/2022
Award of legal custody of dependent child to paternal grandmother was not error where mother failed to make significant progress on her case plan and therefore extension of temporary custody was not supported under R.C. 2151.414(D)(1) and mother did not address her mental health problems, while grandmother ensured that the child participated in a program to address developmental delays and grandmother was likely to facilitate visitation between mother and child, R.C. 3109.04.

Bindover. State v. Smith, 2022-Ohio-274 | Supreme Court of Ohio | 02/03/2022 In a discretionary bindover of juvenile from the juvenile court to the general division court upon a finding of probable cause for specified offenses and a finding that the juvenile was not amenable to care or rehabilitation within the juvenile system, R.C. 2152.12(B), the general division court lacked subject-matter jurisdiction to also prosecute appellant for offenses and firearm specifications for acts that the juvenile court found were not supported by probable cause; remanded for further proceedings.

Custody. K.H. v. D.B., 2022-Ohio-347 | 6th Appellate District | 02/07/2022
Termination of the parties' shared parenting plan is in the best interest of the child where, inter alia, the parties are unable to communicate effectively or reach a compromise or agreement on the major issues pertaining to their child's life and the father has chosen to reside in a different town from mother, making the parties' alternating week-to-week custody arrangement a further problem for their child, who is now school-aged, R.C. 3109.04.

Custody. In re S.C., 2022-Ohio-356 | 10th Appellate District | 02/08/2022
Award of permanent custody of children to agency was not error where, inter alia, parents were inconsistent in visiting children and mother acknowledged that she needed further treatment for drug problem but refused treatment, and mother failed to substantially remedy conditions that caused removal of children, while the children are very bonded with each other and with their foster family, and children have consistently expressed desire to live with foster parents and to be adopted, R.C. 2151.414.

Bindover. State v. Moore, 2022-Ohio-460 | 4th Appellate District | 02/09/2022
In a conviction by plea of 17 year-old juvenile of felonious assault and endangering children following bindover, judgment is affirmed since none of the assignments of error challenge the subject-matter jurisdiction of the trial court, but only challenge the juvenile court's finding of probable cause that appellant committed the offenses and concluding that he was not amenable to rehabilitation within the juvenile

system and, by pleading guilty to felonious assault, appellant waived all non-jurisdictional errors that purportedly occurred in his bindover proceedings.

Custody/Shared parenting. In re G.B., 2022-Ohio-382 | 8th Appellate District | 02/10/2022 Designation of mother as residential parent for child for school purposes was not error where the parties' shared-parenting decree allowed for modification of terms of plan for school purposes, only the terms, rather than the allocation, of parental rights and responsibilities were modified, and thus R.C. 3109.04(E)(1)(a) did not require a finding of a change of circumstances, and the lower standard under R.C. 3109.04(E)(2)(b) required only the determination of the child's best interest.

Custody. In re J.T., 2022-Ohio-455 | 9th Appellate District | 02/16/2022
Award of permanent custody of children to agency was not error where, inter alia, mother stopped visiting children in person and had a few virtual visits with only one child, she failed to remedy her mental health and substance abuse issues and did not otherwise achieve stability in her life, she did not engage in case plan services on a consistent basis, and she did not focus on how case affected children, while children are doing well in same foster home, R.C. 2151.414.

Simultaneous custody. In re K.M.P., 2022-Ohio-466 | 8th Appellate District | 02/17/2022 Award of emergency temporary custody of child to county department of children and family services with simultaneous award of legal custody to department of youth services following adjudication of child as delinquent was error since, although award of concurrent custody is not explicitly prohibited, juvenile court does not possess statutory authority to issue competing custody orders, and therefore placement of child in temporary custody of county department is vacated, R.C. 2151.011(B)(21) and 5139.01(A)(3).

Jurisdiction/Disposition. In re H.M.M., 2022-Ohio-473 | 1st Appellate District | 02/18/2022 Award of permanent custody of abused and/or dependent children to agency was error where the court lacked subject-matter jurisdiction because, following the adjudicatory hearing, it failed to hold a separate dispositional hearing during the time period required under former R.C. 2151.35(B)(1) before issuing a disposition order, agency's filing of amended complaint without any change in facts or allegations did not extend or reset the deadline, and mother could not explicitly waive the deadline after its expiration.

Custody. [J.S.] v. [K.V.], 2022-Ohio-487 | 2nd Appellate District | 02/18/2022
Award of legal custody of child to non-parents was not error where credible evidence showed that mother was unwilling to accept non-parents' substantial positive effect on child's life, mother had unresolved mental health issues, there was evidence that her choices regarding her sex-offender boyfriend did not prioritize the child and had a negative effect on the child's welfare, mother and her family attempted to poison relationship between child and non-parents, and non-parents provide stable and safe home for child.

Labor and Employment

Harassment. Hinkle v. L Brands, Inc., 2021-Ohio-4187 | 10th Appellate District | 11/23/2021 In employees' action against employer alleging, inter alia, harassment by another employee, the trial court did not err in granting employer's motion for judgment on the pleadings since employees did not allege that the harassment they experienced was based on protected class status under R.C. 4112.02(A), the incidents do not support claim for hostile-environment sexual harassment, and alleged harasser's behavior was not outrageous or intolerable.

Discrimination. Coco v. Beyesly's Restaurant, 2021-Ohio-4201 | 5th Appellate District | 11/30/2021
In employee's disability discrimination action against employer for replacing him when his health condition prevented him from working when scheduled, summary judgment in favor of employer was not error since employee was unable to perform essential functions of his job, he did not meet attendance requirements to be considered a qualified individual protected by the Americans with Disabilities Act, and his absences and inability to perform job requirements caused a hardship to employer, R.C. 4112.02(A).

Discrimination/Jurisdiction. Guinn v. Cuyahoga Metro. Hous. Auth., 2021-Ohio-4212 | 8th Appellate District | 12/02/2021 In police sergeant's discrimination action in common pleas court against housing authority for disciplining him when similarly situated non-minority officers were not disciplined, the court did not err in granting authority's motion to dismiss since the state employee relations bureau has exclusive jurisdiction over sergeant's claims, and R.C. 4117.09(B)(1) does not provide an exception to its jurisdiction.

Unemployment compensation. Pryor v. Dir., Ohio Dept. of Job & Family Servs., 2021-Ohio-4315 | 8th Appellate District | 12/09/2021 In employee's appeal of decision finding him ineligible for unemployment compensation, the trial court did not err in affirming review commission's decision since employee quit his employment without just cause because he failed to inform employer of his alleged medical condition prior to quitting, he failed to provide any medical evidence demonstrating that he was unable to work on the day he quit, and he also did not request any work that conformed to his physical capabilities, R.C. 4141.29(D)(2)(a).

Evidence/Mediation statements. Youngstown v. State Emp. Relations Bd., 2021-Ohio-4591 | 7th Appellate District | 12/13/2021 Affirming the state employment relations board's (SERB) ruling that the city committed an unfair labor practice by threatening to eliminate and subsequently eliminating three battalion chief positions in retaliation against union for pursuing a grievance to arbitration was not error where, inter alia, the record demonstrates that neither SERB nor the administrative law judge considered or relied on any confidential mediation statements and there is no concrete, credible evidence that any alleged mediation statements in SERB's Investigator's Report were the basis for the probable cause finding or SERB's order, R.C. 4117.12.

Discrimination/Limitations. Hostacky v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-4464 | 10th Appellate District | 12/16/2021 Dismissal, Civ.R. 12(B)(6), of state employee's discrimination and related claims action by the Court of Claims on reasoning that the complaint was filed beyond the two-year statute of limitations is affirmed since the two-year statute of limitations in R.C. 2743.16 applies to claims in which employees seek monetary damages against the state for discrimination, McCoy, rather than the general six-year statute of limitations in R.C. 2305.07.

Court order/Contempt. State Employment Relations Bd. v. Youngstown, 2021-Ohio-4552 | 7th Appellate District | 12/27/2021 In unfair labor practice case in which state employment relations board filed a petition seeking reinstatement of contractual status quo existing with firefighters union, the trial court did not err in holding city in contempt for failing to abide by court's order enjoining city from eliminating battalion chief positions since the contempt proceeding was not rendered moot when the board issued its final judgment, and there is no evidence that the court abused its discretion in finding city in contempt of previous order, R.C. 4117.12.

Retaliation. Moody v. Ohio Dept. of Mental Health & Addiction Servs., 2021-Ohio-4578 | 10th Appellate District | 12/28/2021 In employee's race discrimination and retaliation action against employer alleging unfair treatment after suspension, summary judgment in favor of employer on retaliation claim was error since employee's filing of civil rights complaints following his suspension was protected activity, he was subjected to adverse employment action when he was investigated and subjected to police interviews, close temporal proximity between complaints and adverse action demonstrates causation, and employer's explanation could be seen as a pretext for retaliation.

Retirement account. State ex rel. Willer v. Ohio Public Emps. Retirement Sys., 2021-Ohio-4575 | 10th Appellate District | 12/28/2021 Denial of city employee's petition for a writ of mandamus to compel state public retirement system (OPERS) to allow continued service credit toward retirement and to convert his money purchase plan account to a traditional pension plan is affirmed where employee, who had retired as a police officer, began drawing a pension from separate police pension fund, so employee became an "other system retirant" under R.C. 145.38(A) when he began receiving benefits from police pension, and he could continue to contribute to OPERS during his city employment, but those contributions would apply to a money market account rather than the traditional pension plan.

Public employee/Probation. Bowman v. S. Vienna, 2021-Ohio-4587 | 2nd Appellate District | 12/29/2021
In former police chief's administrative appeal of her termination, arguing that she was not afforded due process under R.C. 737.171, the trial court erred in ruling that she was no longer a probationary employee and that she qualified for the statutory due process protections; the statutory hiring process provides that the employee-police chief shall first go through a six-month probationary period, after which the mayor may remove or finally appoint the employee, and since the mayor did not finally appoint the police chief, she was a probationary employee.

Compensation/Cognovit note. Petruzzi v. Garden Art Innovations, L.L.C., 2021-Ohio-4600 | 9th Appellate District | 12/30/2021 In employee's action against employer alleging default on cognovit note owed as part of settlement agreement related to termination of employee's employment, resulting in judgment for employee, the trial court erred in granting employer's motion for relief from judgment where employer's alleged substantial performance defense does not go to integrity and validity of creation of the note and is therefore not a proper meritorious defense, and although the amount employer failed to pay was only two cents, the default provision in the note was unambiguous, Civ.R. 60(B).

Non-compete agreement. MetroHealth Sys. v. Khandelwal, 2022-Ohio-77 | 8th Appellate District | 01/13/2022
In a breach of contract action by surgeon's former employer, issuance of limited preliminary injunction against surgeon, modifying terms of parties' non-compete agreement, is affirmed since the trial court properly addressed only former employer's likelihood of success on the merits of its breach-of-contract claim, preventing surgeon from working with new employer for the injunctive period would create a professional and familial undue hardship, if surgeon was prevented from practicing his specialty, the public would lose the benefit of his expertise, and former employer would not suffer irreparable injury by allowing surgeon to continue practicing.

Job classification. Gerst v. Ohio Dept. of Transp., 2022-Ohio-86 | 10th Appellate District | 01/13/2022
In public employee's administrative appeal of denial of her request for reclassification of her position within department of transportation, the trial court did not err in affirming the state personnel board of review's order where the board compared relevant class specification of positions in question with employee's actual duties to determine the most appropriate class, and the determination was supported by substantial evidence, R.C. 119.12.

Civil service/Mootness. State ex rel. Rimroth v. Harrison, 2022-Ohio-110 | 1st Appellate District | 01/19/2022
In relator's action against city seeking promotion within fire department, the trial court did not err in dismissing case as moot since the civil service commission complied with the court's previous mandate on remand and completed the selection process for the open position, and relator did not administratively appeal the decision to promote another candidate.

Discrimination/Age/Disability. Feerasta v. Univ. of Akron, 2022-Ohio-653 | Court of Claims | 01/25/2022
In professor's age and disability discrimination action against university for terminating his employment following medical leave, university's motion for summary judgment is granted where, although professor was member of protected class and was qualified for his position, he failed to identify circumstantial evidence sufficient to support an inference of discrimination, and even if he could establish a prima face case, university showed that its reduction in force was made out of economic necessity, R.C. 4112.01 and R.C. 4112.02.

Public employee/Arbitration. Staple v. Ravenna, 2022-Ohio-261 | 11th Appellate District | 01/31/2022
In police officer's action against city seeking enforcement of arbitration provision of collective bargaining agreement (CBA) following termination of his employment, the trial court did not err in granting city's motion to dismiss for lack of subject-matter jurisdiction where officer's claims stem from a labor dispute which falls under the exclusive jurisdiction of the State Employee Relations Board, R.C. 4117.09(B), and the officer is not a party to the CBA and lacks standing to pursue arbitration under R.C. 2711.03(A).

Discrimination/Evidence. Stachura v. Toledo, 2022-Ohio-345 | 6th Appellate District | 02/07/2022 In firefighter's gender discrimination and retaliation action against city for multiple incidents

with deputy fire chief that led to change in firefighter's job requirements and her termination, judgment for city was error since firefighter's exhibit documenting incidents of discrimination was incorrectly excluded as hearsay because it was not offered to prove the truth of the matter asserted, and any danger of unfair prejudice stemming from hearsay nature of exhibit did not substantially outweigh its probative value, Evid.R. 403(A).

Public employee/Appeal. Brady v. Youngstown State Univ., 2022-Ohio-353 | 10th Appellate District | 02/08/2022 Dismissal for lack of subject-matter jurisdiction of employee's administrative appeal from the State Personnel Board of Review (SPBR) of university's elimination of his position followed by rescission of elimination and reinstatement was not error since adoption of rescission by the SPBR was a ministerial act and not an adjudication pursuant to 119.01(D) because the board did not address the merits of the appeal, and therefore it was not subject to appeal; employee's position was subsequently eliminated again, but there is no record of an appeal of this second job elimination.

Accommodation/Discrimination. Coomer v. Opportunities for Ohioans with Disabilities, 2022-Ohio-387 | 10th Appellate District | 02/10/2022
In former employee's action against employer-state entity claiming failure to accommodate, trial court did not err in ruling in favor of employee since employee proved that employer failed to provide a reasonable accommodation to employee's disability and that such an accommodation would not cause an undue hardship where, inter alia, employee provided medical evidence demonstrating that her mental illness prevented her from working past a certain time of day and that further discussion between the parties was not necessary, Ohio Adm. Code 4112-5-08(E)(1); employee also proved her disability discrimination claim based on constructive discharge.

Procedure

Default judgment. Mill City Mtge. Loan Trust 2019-1, Wilmington Savs. Fund Soc., FSB v. Knight, 2021-Ohio-4135 | 11th Appellate District | 11/22/2021
In plaintiff-lender's foreclosure action against defendant for default on loan, trial court did not err in granting plaintiff's motion for default judgment since defendant failed to answer or appear prior to plaintiff's filing of motion, so notice and hearing requirements of Civ.R. 55(A) were not applicable, response deadline set forth in Civ.R. 6(C)(1) did not apply, and defendant's Civ.R. 60(B) motion to vacate the judgment entry was withdrawn prior to the trial court's consideration.

Pleading/Governmental immunity. Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs., 2021-Ohio-4096 | Supreme Court of Ohio | 11/23/2021 In grandmother's action against county agency and caseworkers for wrongful death of grandchild who was killed after being returned to her mother's care, granting caseworkers' motions for judgment on the pleadings was error where the court reasoned that complaint did not set forth sufficient facts to overcome the presumption of governmental immunity afforded to the caseworkers under R.C. 2744.03(A)(6); when a complaint invokes an exception to a government employee's immunity, notice-pleading suffices, the plaintiff may not be held to a heightened pleading standard, and the complaint in the instant case met the applicable notice-pleading standard.

Mandamus/Procedendo. State ex rel. Roberts v. Hatheway, 2021-Ohio-4097 | Supreme Court of Ohio | 11/23/2021
Dismissal by the court of appeals of relator's petition for a writ of mandamus and/or a writ of procedendo seeking to order the trial court judge to rule on relator's jurisdictional motion is affirmed since the trial court judge had dismissed relator's motion on res judicata grounds, rendering moot relator's petition in the court of appeals; to argue the merits of his jurisdictional motion, relator has an adequate remedy by way of appeal to address any alleged error in the trial court's ruling on that motion.

Procedendo. State ex rel. M.D. v. Cuyahoga Cty. Court of Common Pleas, Div. of Domestic Relations, 2021-Ohio-4171 | 8th Appellate District | 11/23/2021
In divorce and civil protection order cases in which husband filed a petition for a writ of procedendo to compel the trial judge to proceed with both cases, the writ is dismissed since it would improperly control the discretion of the judge in handling the cases where six judges recused themselves from this intensely litigated matter, a new judge was recently assigned, and the new judge conducted an attorney conference and set a trial date for one of the cases; therefore, the judge is not refusing to proceed to judgment or unnecessarily delaying proceeding to judgment.

Judgment/Interrogatories. Skycasters, L.L.C. v. Kister, 2021-Ohio-4154 | 9th Appellate District | 11/24/2021
In plaintiff-internet service provider's action against defendant-former employee alleging that defendant violated non-compete agreement by secretly developing software while he was still employed by plaintiff and later using the software to start a new company, trial court did not err in issuing judgment for defendant where, although the jury erroneously signed a general verdict form in favor of plaintiff as to breach of contract and breach of duty, Civ.R. 49(B) allowed judgment notwithstanding the verdict in accordance with interrogatory answers stating that there were no damages suffered by plaintiff.

Small claims court/Counterclaim. Burke v. LaGar Marketing, Inc., 2021-Ohio-4151 | 9th Appellate District | 11/24/2021 In action in small claims court by tenant to recover security and water deposits from landlord, the court's dismissal of landlord's counterclaim on reasoning that landlord failed to file an answer pursuant to Civ.R. 7(A) was error since R.C. Ch. 1925, which governs proceedings in the small claims division of municipal court, does not contemplate the filing of an answer.

Frivolous conduct. Full Spectrum Invests., L.L.C. v. Victory Marketing & Consultant, Inc., 2021-Ohio-4169 | | 11/24/2021 In property purchaser's breach of contract action against property seller that was voluntarily dismissed following settlement agreement, and purchaser subsequently filed an unsuccessful Civ.R. 60(B) motion asserting that seller failed to comply with the settlement, the trial court did not err in denying seller's motion for sanctions against purchaser, in which seller alleged that purchaser had frivolously sought to vacate seller's dismissal from the action, since seller did not demonstrate that it had complied with settlement agreement deadlines, and denial of purchaser's Civ.R. 60(B) motion was insufficient to demonstrate frivolous conduct under R.C. 2323.51(A)(2)(a).

Procedure (continued)

Attorney disqualification. Musser v. Youngstown Orthopaedic Assn., Ltd., 2021-Ohio-4301 | 7th Appellate District | 11/29/2021 In surgeon's action against surgical practice seeking a declaratory judgment regarding enforceability of non-compete covenant when he sought to withdraw as member of practice, the trial court did not err in disqualifying practice's counsel for having a conflict of interest since counsel previously represented surgeon in another case and advised him regarding his legal rights related to joining the practice as a member, surgeon did not consent to counsel representing practice against him, and practice's operating agreement carried a presumption of shared confidence under the Dana test.

Appeal. Arnold v. Arnold, 2021-Ohio-4186 | 11th Appellate District | 11/29/2021 Appeal from magistrate's scheduling order and amended order is dismissed for lack of a final appealable order, R.C. 2505.02(B), since the magistrate's orders did not receive judicial approval, and they remained interlocutory orders that could be reconsidered on the court's own motion or that of a party.

Arbitration/Declaratory action. RM Riggle Ents., Inc. v. Commerce Park Place Holdings, L.L.C., 2021-Ohio-4215 | 8th Appellate District | 12/02/2021
In subcontractor's action seeking declaration that it should not be joined in arbitration between property owner and general contractor to determine damages to property, the trial court did not err in granting general contractor's motion to stay proceedings pending arbitration—different from a motion to compel arbitration—where, although subcontractor did not consent in writing to be joined as third party in arbitration, the stay was in accordance with R.C. 2711.02(B), and entire action must be stayed including subcontractor's pending declaratory judgment action.

Appeal. Jones v. Jones, 2021-Ohio-4263 | 11th Appellate District | 12/06/2021 Appeal from magistrate's scheduling orders regarding a show cause motion, the trial, temporary support and discovery is dismissed for lack of a final appealable order, R.C. 2505.02(B), since the orders had not received judicial approval; although magistrate's orders are effective without judicial approval, they are not directly appealable.

Appeal. Rinaldi v. All Pro Vinyl Graphic Installs, L.L.C., 2021-Ohio-4265 | 11th Appellate District | 12/06/2021
Appeal is dismissed for being untimely filed where appellant was served notice of the trial court's judgment entry within three days of entry of the judgment on the journal, and the 30-day period for filing a notice of appeal began to run on the date of entry of the judgment, App.R. 3, 4(A)(1) and Civ.R. 58(B).

Jury. Long v. Harding, 2021-Ohio-4240 | 12th Appellate District | 12/06/2021
In plaintiffs' negligence action against defendant-driver for injuries sustained in vehicle collision, denial of plaintiffs' motion to strike juror for cause, in which plaintiffs asserted that the juror was biased against negligence plaintiffs, was not error since the juror never expressed an unwillingness to follow applicable law, two other jurors expressed similar views and plaintiffs did not seek to excuse them for cause or otherwise, and the record does not reflect that the juror exerted undue influence on the jury or any individual juror during deliberations, R.C. 2313.17.

Attorney disqualification. Total Quality Logistics v. Integrity Express Logistics, L.L.C., 2021-Ohio-4242 | 12th Appellate District | 12/06/2021
In an action by plaintiff-freight brokerage service against defendant-competitor alleging misappropriation of trade secrets and unjust enrichment after plaintiff's employee provided pricing information to defendant's broker, the trial court did not err in declining to disqualify defendant's counsel where, although there was a past attorney-client relationship between defendant's counsel and plaintiff, the issues involved were not substantially related and defendant's counsel was not privy to specific pricing information related to current action.

Appeal/Jurisdiction. Harris v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-4281 | 10th Appellate District | 12/07/2021 In plaintiff's action to recover lost property, resulting in judgment for state department on reasoning that plaintiff failed to prove imposition of a legal bailment duty on the part of department, appeal is dismissed for lack of jurisdiction since R.C. 2743.10 provides that there shall be no appeal to the court of appeals where the action was initially determined administratively by the clerk of the Court of Claims.

Frivolous conduct. Sworak v. Great Lakes Recreational Vehicle Assn., 2021-Ohio-4309 | 8th Appellate District | 12/09/2021 In vehicle dealership owner's action in common pleas court against association for removing him as trustee and allegedly creating policies harmful for smaller association members, it was not error to deny defendant's motion for sanctions where, although the court arguably lacked jurisdiction over first count of complaint that appears to be a quo warranto claim, not all the relief sought fell under the ambit of a quo warranto action, and it cannot be concluded that the dealership owner lacked a good faith belief that the trial court possessed jurisdiction over claims and remedies asserted in the first count, R.C. 2323.51.

Relief from judgment/Retained jurisdiction. Moccabee v. Bashore, 2021-Ohio-4345 | 6th Appellate District | 12/10/2021 In negligence action by plaintiff-passenger against defendant-driver for injuries sustained in vehicle accident, resulting in judgment for defendants, the trial court did not err in denying plaintiff's motion for relief from judgment since the court's retention of jurisdiction to enforce parties' settlement agreement did not prevent the court's judgment entry dismissing the case from becoming final, and because the deadline for filing the Civ.R. 60(B) motion began to run when final judgment was journalized, plaintiff's motion was not timely.

Forum non conveniens. Epperson v. Covington Madison Corp., 2021-Ohio-4359 | 12th Appellate District | 12/13/2021 In plaintiffs' breach of contract action against defendant-out-of-state wedding venue for refusing to allow cancellation when pandemic regulations restricted occupancy capacity, the trial court did not err in granting defendant's motion to dismiss on grounds of forum non conveniens since the defendant and all witnesses are located in another state, and because the legal issues are firmly rooted in the other state, dismissal was not unreasonable, arbitrary or unconscionable.

Discovery/Attorney-client privilege. Jacobs v. Equity Trust Co., 2021-Ohio-4349 | 9th Appellate District | 12/13/2021
In plaintiffs' class action against defendant-investment company alleging investment losses in self-directed individual retirement accounts, the trial court erred in compelling defendant to produce privileged drafts and

communications where the affidavit of defendant's officer contained averments specific to each disputed document, and each document is protected from disclosure by attorney-client privilege because its predominant purpose is seeking or relaying legal advice.

Objections/Affidavits. Miami Valley Constr. Group v. Thompson, 2021-Ohio-4358 | 12th Appellate District | 12/13/2021 In plaintiff-construction group's breach of contract action against defendant-homeowner for failure to pay invoice for services performed, the trial court did not err in adopting magistrate's decision in favor of plaintiff where, although equipment malfunction prevented proceedings from being recorded, Civ.R. 53(D) permits an objecting party to support objections with an affidavit of evidence, defendant's detailed affidavit undermines claim that he cannot remember testimony, and affidavits from both parties sufficiently recreated record for independent review on appeal.

Relief from judgment. Sunrise Cooperative, Inc. v. Durbin, 2021-Ohio-4416 | 5th Appellate District | 12/14/2021 In plaintiff's breach of contract action against defendant, resulting in a default judgment, the trial court erred in granting defendant's Civ.R. 60(B) motion for relief from judgment, arguing lack of service, since the motion was granted three days after it was filed and before plaintiff had an opportunity to respond in opposition, in violation of Civ.R. 6(C)(1) and local rules.

Dismissal. Colvin v. Ctr. for Dev. & Property Solutions, 2021-Ohio-4392 | 10th Appellate District | 12/14/2021 Dismissal of plaintiff's complaint, Civ.R. 12(B)(6), that could be construed as a landlord-tenant claim under R.C. 5321.07 is affirmed since plaintiff's complaint does not show or even assert that he has complied with the notice and request-to-remedy provisions of that statute, and the statute does not permit the damages he has requested; also, the trial court properly considered defendants' motions to dismiss before considering plaintiff's motion for default judgment, arguing that defendants, who had filed motions to dismiss, failed to timely file answers.

Appeal. Tate v. Prime Auto Sales, L.L.C., 2021-Ohio-4417 | 5th Appellate District | 12/15/2021 Appeal of judgment adopting magistrate's decision dismissing plaintiff's complaint that defendant sold her an undrivable car is dismissed since plaintiff failed to file a brief in compliance with App.R. 16 and also failed to file a transcript, so the regularity of the proceedings below is presumed.

Forum non conveniens/Custody. Pridemore v. Pridemore, 2021-Ohio-4449 | 6th Appellate District | 12/17/2021 In divorce action in which wife sought transfer of change-of-custody action to the court in the state where she resides with child, the trial court did not err in finding the Ohio court an inconvenient forum since the court had authority on its own motion under R.C. 3127.21 to determine that a forum in another state would be more convenient, regardless of whether wife waived her challenge concerning the forum, and the increased use of technology necessitated by the pandemic did not render the court's inconvenient forum findings inapplicable.

Appeal. In re Adoption of C.J.T., 2021-Ohio-4525 | 5th Appellate District | 12/22/2021 In stepfather's petition for adoption of child, appeal of the trial court's finding that father's consent was not required is dismissed for lack of jurisdiction because father failed to file notice of appeal within time required by App.R. 4(A).

Relief from judgment. Yaklevich v. Dinneen, 2021-Ohio-4531 | 10th Appellate District | 12/23/2021 In attorney's breach of contract and unjust enrichment action against client for unpaid legal fees, resulting in a default judgment against client, the trial court's denial of client's Civ.R. 60(B)(5) motion for relief from judgment is affirmed where client knew of default judgment and was aware of her basis for seeking relief from judgment, but she failed to file a transcript or to establish timeliness of her motion.

Judgment. In re A.D., 2021-Ohio-4583 | 9th Appellate District | 12/29/2021 Award of permanent custody of abused and dependent child to agency is affirmed where father's assertion that a typographical error in the case number on the trial court's judgment renders the judgment non-final is without merit since throughout the record, documents bear various versions of the case number and father does not argue that he was unaware of any documents that were filed, and each document entered in the record bears a bar code with the case number above it and an assigned journal entry number below it; also, father provides no legal authority to support his assertion.

Motion/Non-party. Crumpler v. Crumpler, 2021-Ohio-4622 | 9th Appellate District | 12/30/2021 In a divorce action in which wife sought finding of contempt against husband's attorney for filing a fraudulent affidavit, the trial court did not err in denying motion for contempt on reasoning that it lacked jurisdiction since the motion was made against a non-party in the case in which final judgment had not yet been entered, and wife failed to identify any prejudice she suffered from denial of motion because amended affidavit included previously omitted information, R.C. 2705.09.

Pleading. U.S. Bank Natl. Assn. v. MMCO, L.L.C. , 2021-Ohio-4605 | 8th Appellate District | 12/30/2021 In bank's foreclosure action against purchaser of office building where seller of building intervened, filing claims against certain defendants asserting breach of promissory note, breach of guaranty, fraud and related claims, the trial court erred in granting a summary judgment to the seller on the fraud claim since the seller did not present any evidence of actual damages for fraud in addition to the damages it claimed for breach of the guaranty, and the damages for both claims are the same.

Attorney disqualification. COD Properties Ohio, L.L.C. v. Black Tie Title, L.L.C., 2022-Ohio-17 | 8th Appellate District | 01/06/2022 In a dispute between plaintiff-real estate property renovation company and defendant-contractor hired to make purchases of property on plaintiff's behalf, the trial court erred in disqualifying plaintiff's attorney since the court failed to establish that attorney's testimony was necessary pursuant to Prof.Cond.R. 3.7 where the court made its decision solely based on defendant's attachments to its motion to disqualify, which did not establish that attorney's knowledge extended beyond what was necessary to draft documents for plaintiff.

Discovery/Financial records. Estate of Wiedemer v. Cleveland Yachting Club, Inc., 2022-Ohio-20 | 8th Appellate District | 01/06/2022 In an action for wrongful death/survivorship in which plaintiffs-relatives of decedent claimed loss of support after decedent died from a fall on the premises of defendant-yacht club, the trial court did not err

in denying plaintiffs' motions to quash defendant's subpoenas to obtain medical records since the extent to which decedent had supported plaintiffs might be ascertainable from the financial records, it does not appear that plaintiffs sought an in camera inspection of the documents for a determination as to whether any protection should be afforded to the documents, and the benefit of disclosure of the records outweighs plaintiffs' privacy interests.

Prohibition/Jurisdiction. Ashley v. Kevin O'Brien & Assocs. Co., L.P.A., 2022-Ohio-24 | 10th Appellate District | 01/06/2022 In attorney's motion for sanctions, arising from plaintiff's later-dismissed action against attorney alleging violations of fair debt collection practices, attorney's petition for writ of prohibition to prevent judge from permitting discovery related to attorney's sanctions' motion is denied since the court does not lack jurisdiction to proceed in the matter, attorney's own briefing undermines court's alleged lack of authority, and prohibition is not meant to prevent or correct an erroneous decision where subject matter jurisdiction exists.

Pleading. T.H. Sly, L.L.C. v. Jefferson, 2022-Ohio-59 | 5th Appellate District | 01/10/2022 In a breach of contract action filed by plaintiff-bail bond agency against defendant for failure to pay forfeiture judgment when his brother did not appear for trial, summary judgment in favor of plaintiff is affirmed where defendant failed to assert plaintiff's failure to mitigate damages in his answer or through amended pleading, and therefore waived the issue pursuant to Civ.R. 9(C).

Judgment. Eddy v. Big Show, Ltd., 2022-Ohio-34 | 9th Appellate District | 01/10/2022 In plaintiff's breach of contract action against defendant-caterer seeking to recover money paid under parties' contract, prompted by defendant's refusal to reschedule pandemic-related postponed wedding reception without a significant fee, judgment ruling that defendant engaged in a deceptive practice in violation of Consumer Sales Practices Act (CSPA) was error since plaintiff alleged only breach of contract rather than a violation of the CSPA.

Judgment. Page v. Big Show, Ltd., 2022-Ohio-38 | 9th Appellate District | 01/10/2022 In plaintiff's action against defendant-caterer seeking refund of a deposit after defendant's representative convinced plaintiff to cancel her scheduled event as the result of the pandemic, the trial court erred in entering judgment in favor of plaintiff based on finding that defendant had violated the Consumer Sales Practices Act (CSPA) since plaintiff never alleged a CSPA claim, there was no language in complaint regarding any unfair or deceptive consumer-sales practice, and the CSPA was never discussed at the trial.

Revivor/Collateral attack. Hudson & Keyse L.L.C. v. Sherrills, 2022-Ohio-126 | 8th Appellate District | 01/20/2022 In plaintiff-collections agency's action against defendant seeking collection of debt assigned by bank, resulting in a default judgment for plaintiff, the trial court did not err in granting plaintiff's motion for revivor of the dormant judgment in response to defendant's challenge of the original judgment since an objection to a motion to revive a dormant judgment is limited to the issue of the revivor, not the underlying merits of the judgment, so objections to a motion for revivor may not be used to collaterally attack the validity of the judgment or raise any defense that existed prior to the entry of judgment.

Service. Altman v. Parker, 2022-Ohio-142 | 1st Appellate District | 01/21/2022 In plaintiffs' action seeking damages for injuries sustained in vehicle collision with defendant, the trial court did not err in denying defendant's motion to set aside default judgment since plaintiffs completed service under Civ.R. 4.6(D) after certified mail service was returned as unclaimed, service was made in a manner reasonably calculated to notify defendant and afford him the opportunity to respond, and evidence of receipt was found to be more compelling than defendant's evidence rebutting presumption of service.

Summary judgment. Cty. Risk Sharing Auth., Inc. v. State, 2022-Ohio-164 | 11th Appellate District | 01/24/2022 In plaintiff-county risk sharing authority's action seeking a declaration that defendant-state was solely responsible to defend and indemnify plaintiff and related entities in lawsuits regarding an automobile accident caused by county employee, the trial court erred in granting summary judgment in favor of plaintiff since the judgment was entered prior to expiration of time for defendant to reply, in violation of Civ.R. 65(C), and the judgment entry did not provide reasons for the court's decision.

Magistrate's decision/Evidence. Sager v. Burlington of Geauga Condominium Owners Assn., 2022-Ohio-168 | 11th Appellate District | 01/24/2022 In condominium owner's action against condominium association for damages sustained to property in water leak incident, judgment in favor of association is affirmed where owner failed to object to magistrate's decision as required under Civ.R. 53(d)(3)(b), and he failed to adduce evidence beyond his personal testimony that association or contractor hired by association proximately caused the alleged damage.

Appeal/Relief from judgment. Hazelwood Assn., Inc. v. Helfrich, 2022-Ohio-174 | 5th Appellate District | 01/24/2022 In association's action against homeowner seeking recovery of unpaid association fees where the case was originally filed in small claims court, later transferred to common pleas court, and then dismissed for failure to prosecute, the trial court erred in granting association's Civ. R. 60(B) motion for relief from judgment; since the association asserts that it did not receive notice of the possibility of dismissal, it should have filed a direct appeal where the lack of notice is demonstrated by the record, so the association's Civ. R. 60(B) motion was a substitute for appeal and thus barred by res judicata.

Class action/Judgment. Jones v. Sharefax Credit Union, Inc., 2022-Ohio-176 | 1st Appellate District | 01/26/2022 In plaintiffs' class action against defendant-credit union alleging violations of the Retail Installment Sales Act for sending defective notices of sale for purchased vehicles, the trial court's denial of class certification is reversed since the court did not provide any analysis in its written entry, the fact that a hearing was conducted and that briefs were thoroughly reviewed does not demonstrate a rigorous analysis, and several of the Civ.R. 23 requirements were disputed, so grounds for denying certification were not obvious.

Discovery/Confidentiality. Gangale v. Coyne, 2022-Ohio-196 | 8th Appellate District | 01/27/2022 In wife's legal malpractice action against attorneys who represented her in divorce action, the trial court did not err in denying

husband's motion to quash a subpoena duces tecum that wife issued to husband's accounting firm, ordering production of tax documents since the documents at issue were discoverable under Civ.R. 26(B), either under a protective order or in a manner that otherwise ensured the confidentiality of the documents; although husband was not the subpoenaed party, he did have standing under Civ.R. 45(C) to file the motion to quash because of his privacy interest in the subpoenaed documents.

Discovery. Desmond v. Gains, 2022-Ohio-200 | 7th Appellate District | 01/27/2022 In plaintiff-prosecutor's action against defendants-supervising attorneys alleging, inter alia, that termination of his employment was in retaliation for plaintiff's report of misconduct by fellow prosecutor, the trial court erred in denying plaintiff's motion to quash defendants' subpoenas duces tecum since the document at issue was protected by the attorney-client privilege, plaintiff was ordered to produce a document that was not responsive to defendants' request, and defendants could have sought the non-privileged information they apparently were seeking using other tactics, Civ.R. 34(B), Shelton.

Relief from judgment. Brooks v. RKUK, Inc., 2022-Ohio-266 | 5th Appellate District | 01/28/2022
In employee's action for negligence and statutory violations against former employer for firing her after she complained about sexual harassment, resulting in a default judgment, the trial court did not err in denying defendant's motion for relief from judgment since defendant's refusal of service and failure to answer the complaint was due to his own willful disregard of process of court and not excusable neglect, and plaintiff provided sufficient proof of compensatory damages to support court's calculation, Civ.R. 60(B).

Class action. Shipp v. Norton Outdoor Advertising, Inc., 2022-Ohio-216 | 1st Appellate District | 01/28/2022
In proposed class action in which plaintiffs asserted that defendants' variable message LED billboards constituted a nuisance by flashing lights into plaintiffs' neighborhood, the trial court did not err in denying plaintiffs' motion to certify, finding that the proposed class failed to satisfy the numerosity requirement under Civ.R. 23(A) since the proposed class included only 23 residences within a 500 foot radius of the signs, and it would not be difficult or inconvenient to identify and join all members of the proposed class.

Appeal. Thomas v. Roscoe, 2022-Ohio-264 | 11th Appellate District | 01/31/2022 In plaintiff's action seeking damages against defendant, resulting in default judgment against defendant and denial of defendant's motion to vacate judgment, appeal is dismissed for lack of a final appealable order since the trial court did not adopt the magistrate's decision regarding damages, so there was no final entry including both the finding of default and the damages and no final entry vacating the default entry; as well, the court did not include Civ.R. 54(B) language, R.C. 2505.02(B)(3).

Relief from judgment/Jurisdiction. Belisle Constr., Inc. v. Perry, 2022-Ohio-239 | 3rd Appellate District | 01/31/2022
In breach of contract action in which the trial court granted a default judgment to plaintiff, it was not error to deny defendant's Civ.R. 60(B)(5) motion for relief from judgment where defendant argued that the dispute was subject to binding arbitration, depriving the court of subject-matter jurisdiction and rendering the judgment void, since defendant waived any right to arbitrate by taking no steps to respond to the claims for more than two years and by failing to move for a stay, R.C. 2711.02; the trial court properly treated defendant's Civ.R. 60(B)(5) motion as a common law motion to vacate since defendant argued that the judgment was void for lack of jurisdiction.

Relief from judgment. SVG Motors L.L.C. v. Caston's Design Group, Inc., 2022-Ohio-286 | 2nd Appellate District | 02/02/2022 In plaintiff-car dealership owner's action against defendant-former employee of interior design company alleging, inter alia, theft for failure to provide materials to design new dealership, resulting in default judgment, trial court did not err in denying defendant's motion for relief from judgment where her first attorney was disqualified and her second attorney's neglect in failing to file anything with the court was inexcusable and was properly imputed to her since her attorney's actions did not constitute abandonment of defendant, Civ.R. 60(B)(5).

Transcript. Farley v. McKenzie, 2022-Ohio-281 | 2nd Appellate District | 02/02/2022 Issuance of a civil protection order against respondent on a finding that, by a preponderance of the evidence, respondent knowingly engaged in a pattern of conduct that caused petitioner to believe that respondent will cause physical harm or will cause or has caused mental distress is affirmed since respondent failed to file a transcript, and the regularity of the proceedings below is presumed.

Dismissal/Choice of law. Gerace v. Biotheranostics, Inc., 2022-Ohio-302 | 8th Appellate District | 02/03/2022
Dismissal of terminated Ohio-based executive's action against employer headquartered in California, alleging wrongful discharge and unfair business practices under California law, was not error since Ohio has the most significant relationship to the instant action in which the injury is executive's termination, and the conduct leading up to the termination and the termination itself took place in Ohio; as well, dismissal of executive's claim for wrongful discharge under Ohio law was not error since the executive failed to establish that the facts at issue would jeopardize public policies, and the trial court's ruling on the motion to dismiss was properly rendered by viewing the complaint alone.

Appeal. Lacy v. Yan, Ashtabula Cty. Dog Warden, 2022-Ohio-331 | 11th Appellate District | 02/07/2022
Appeal is dismissed for failure of appellant to file notice of appeal within the time required by App.R. 4(A)(1), constituting a jurisdictional defect fatal to the appeal.

Appeal. Ruiz v. Musa, 2022-Ohio-335 | 11th Appellate District | 02/07/2022
Appeal is dismissed for failure of appellant to file a notice of appeal within the time required by App.R. 4(A)(1), constituting a jurisdictional defect fatal to the appeal.

Appeal. State ex rel. Guthrie v. Chambers-Smith, Dir., Ohio Dept. of Rehab. & Corr., 2022-Ohio-390 | 10th Appellate District | 02/10/2022
Inmates' petition for writ of mandamus to compel respondents-state department officials to comply with state laws and regulations governing prison administration is dismissed on reasoning that inmates failed to comply with the mandatory filing requirements of R.C. 2969.25(A); inmates' motion to amend the complaint and respondent's motion to dismiss under Civ.R. 12(B)(6) are rendered moot.

Procedure (continued)

Discovery sanction/Attorney fees. Neal v. Lilly, 2022-Ohio-410 | 2nd Appellate District | 02/11/2022
In plaintiff's breach of contract action alleging that defendant failed to pay plaintiff for his help with defense against a separate lawsuit, the trial court did not err in awarding attorney fees to defendant where attorney fees were awarded in conjunction with judgment entry in favor of defendant on his counterclaims as a sanction for plaintiff's repeated discovery violations, Civ.R. 37(B)(3), and plaintiff did not have the right to a jury trial for determination of attorney fees.

Amended complaint. Lima Mem. Hosp. v. Watamura, 2022-Ohio-417 | 3rd Appellate District | 02/14/2022
In hospital's action to recover on cognovit note due when physician left employment, it was not error to grant hospital leave to file amended complaint after physician's successful Civ.R. 60(B) motion for relief from first cognovit judgment; the hospital did not unduly delay its filing of motion for leave to amend since trial court's granting of physician's Civ.R. 60(B) motion reset the clock as to the commencement of the action and hospital filed its motions only two months and 20 days later, and physician suffered no prejudice since his successful Civ.R. 60(B) motion put him in the identical position he was in before the first cognovit judgment was issued.

Appeal. Lloyd v. Rogerson, 2022-Ohio-414 | 9th Appellate District | 02/14/2022
In plaintiff's negligence action against defendant-neighbor for damaging her property, resulting in a summary judgment for defendant, denial of plaintiff's motion for sanctions against defendant, and later a ruling in favor of plaintiff on her Civ.R. 60(B) motion for relief from judgment, plaintiff's appeal is dismissed as to the summary judgment for defendant since it is moot and as to denial of plaintiff's motion for sanctions since it is premature.

Appeal/Final appealable order. Total Quality Logistics, L.L.C. v. Johnson, 2022-Ohio-428 | 12th Appellate District | 02/14/2022 In plaintiff-freight broker's breach of contract action against defendant-former employee for violation of non-compete agreement after defendant began working for competitor where trial court denied defendant's Civ.R. 12(B)(6) motion to dismiss, arguing lack of personal jurisdiction, defendant's appeal is dismissed for lack of a final appealable order, and Civ.R. 54(B) language in supplemental nunc pro tunc decision did not transform entry into a final order.

Dismissal. Barrow v. New Miami, 2022-Ohio-423 | Supreme Court of Ohio | 02/16/2022 Appeal is dismissed as having been improvidently accepted.

Dismissal. Marfut v. Werner, 2022-Ohio-456 | 9th Appellate District | 02/16/2022 In brother's action against sister-trustee of parents' trust alleging various violations of fiduciary duties, the trial court erred in granting sister's Civ.R. 12(B)(6) motion to dismiss since the motion to dismiss was directed at only one of brother's claims, which requested accounting of the trust, but the court considered allegations outside the pleadings and acted sua sponte in dismissing the entire complaint without notice to brother.

Class action/Predominance. Egbert v. Shamrock Towing, Inc., 2022-Ohio-474 | 10th Appellate District | 02/17/2022
In plaintiffs' class action complaint alleging that defendant-towing company was towing from private tow-away zones without statutory authorization, the trial court did not err in denying plaintiffs' motion for class certification where, even if defendant were required to present proof of affirmative defense as to liability under R.C. 4513.601, the legality of each tow is individualized as to location, signage and date, so plaintiffs failed to meet the predominance requirement under Civ.R. 23(B)(3).

Identity protection. State ex rel. Cincinnati Enquirer v. Shanahan, 2022-Ohio-448 | Supreme Court of Ohio | 02/17/2022 Petitions for writs of mandamus seeking to compel judge to provide full access to plaintiff-police officer's affidavit in underlying tort action and for writs of prohibition to prevent the judge from continuing to permit plaintiff to use a pseudonym in underlying case are granted since underlying plaintiff failed to identify any significant privacy interest, and he undermined any privacy interest he may have had by disclosing information that led to the discovery of his identity.

Trial. Scott v. Wells, 2022-Ohio-471 | 1st Appellate District | 02/18/2022
In breach of contract action by seller against buyer for failure to pay balance due on sale of the trained dog, trial court erred in failing to follow proper trial procedure where the case was transferred from small claims court to the regular docket but was treated as though still in small claims court, and witnesses were not sworn in before testifying, in violation of Civ.R. 39.

Professional Responsibility

Suspension. Cleveland Metro. Bar Assn. v. Morton, 2021-Ohio-4095 | Supreme Court of Ohio | 11/23/2021
Attorney is suspended from the practice of law for one year, with six months stayed on condition.

Suspension. Disciplinary Counsel v. Porter, 2021-Ohio-4352 | Supreme Court of Ohio | 12/15/2021
Attorney is suspended from the practice of law for two years, with the final year stayed on conditions.

Suspension. Disciplinary Counsel v. Anthony, 2022-Ohio-221 | Supreme Court of Ohio | 02/01/2022
Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Resignation. In re Resignation of Druckenmiller, 2022-Ohio-222 | Supreme Court of Ohio | 02/01/2022
Attorney resigned from the practice of law with disciplinary action pending.

Suspension. In re Poole, 2022-Ohio-312 | Supreme Court of Ohio | 02/07/2022 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Dismissal. Mahoning Cty. Bar Assn. v. Macejko, 2022-Ohio-322 | Supreme Court of Ohio | 02/09/2022 Attorney's objection to the recommendation of the panel of the Board of Professional Conduct that he be publicly reprimanded for alleged violation of Prof.Cond.R. 8.4(c) relating to pre-notarizing documents is sustained and the complaint is dismissed since the attorney always intended that the documents at issue would be executed in his presence, and his conduct did not amount to a willful breach of the rules.

Suspension. Mahoning Cty. Bar Assn. v. James, 2022-Ohio-402 | Supreme Court of Ohio | 02/14/2022
Attorney is issued an interim remedial suspension from the practice of law, with reinstatement on conditions.

Reinstatement. Disciplinary Counsel v. Hartsock, 2022-Ohio-401 | Supreme Court of Ohio | 02/14/2022 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. Hillman, 2022-Ohio-447 | Supreme Court of Ohio | 02/17/2022 Attorney is suspended from the practice of law for two years, stayed on conditions.

Public and Public Finance

Public records. Little Turtle Civic Assn., Inc. v. Columbus, 2021-Ohio-4439 | Court of Claims | 11/30/2021
In requester's action claiming denial of access to public records, the special master recommends that request be denied as moot where the parties agree that all the records have been provided to requester except for emails that were created after the request was made; public records requests are not prospective or continuing in nature, and subsequently created records are therefore non-responsive, R.C. 149.43.

Public records. Viola v. Cuyahoga Cty. Pros. Office, 2021-Ohio-4210 | 8th Appellate District | 12/02/2021
In requestor's action seeking to compel respondent-prosecutor's office to provide copies of emails in personal account of former assistant prosecuting attorney used for official business, the trial court did not err in adopting special master's recommendation to deny request since respondent has no duty to provide records that it does not possess, and former prosecuting attorney provided an affidavit stating that he searched his private email account and found no emails that related to any case involving official business for respondent, R.C. 149.43(B) and 2743.75.

Public records/Damages calculation. State ex rel. Ware v. Andrews, 2021-Ohio-4257 | 11th Appellate District | 12/06/2021 Relator's petition for writ of mandamus seeking to compel clerk of courts to produce requested documents is denied as moot since requested public records were provided to relator's satisfaction, but relator is entitled to damages pursuant to R.C. 149.43(C)(2) since respondent failed to comply with its obligation under R.C. 149.43(B)(1), reduction factors under statute were not satisfied because requests were not ambiguous or overly broad, and award is limited to one award for all requests made at the same time.

Open Meetings Act/Exception. Kanter v. Cleveland Hts., 2021-Ohio-4318 | 8th Appellate District | 12/09/2021
In taxpayer's action against city seeking an injunction to prohibit council members from discussing racial justice task force business in executive session, allegedly in violation of Open Meetings Act (OMA), the trial court did not err in granting city's motion to dismiss since the task force is a public body under R.C. 121.22(B)(1), members of the task force are public officials under R.C. 149.011(D), and therefore council was permitted to enter into executive session to consider appointments to the task force under OMA exception set forth in R.C. 121.22(G)(1).

Joint city/county project. Medina ex rel. Jocke v. Medina, 2021-Ohio-4353 | 9th Appellate District | 12/13/2021
In taxpayers' action challenging validity of city ordinances related to funding of proposed city/county shared courthouse, the trial court did not err in granting summary judgment to city since, inter alia, ordinance and accompanying contract do not violate R.C. 153.61, which governs city/county agreements providing for joint construction, acquisition or improvement of public buildings and related issues since the contract between the city and county does not provide for the joint construction, acquisition or improvement of anything because the project has not progressed to that stage.

Public records/Court records. State ex rel. Ware v. Byrd, 2021-Ohio-4432 | 8th Appellate District | 12/13/2021
Relator's petition for writ of mandamus to compel respondents to produce certain administrative and case records is denied since relator seeks records of the operation or administration of a court and case information for two cases, and these records constitute court records governed by the Ohio Rules of Superintendence; also, relator, as an inmate, failed to comply with R.C. 2969.25 and that deficiency cannot be cured in a later filing or amendment to the complaint.

Zoning. Omran v. Lucas, 2021-Ohio-4592 | 7th Appellate District | 12/13/2021
In plaintiffs' action for violation of city zoning ordinances, arising from defendants' construction of a two-story garage attached to their main residence by a concrete footer and breezeway, the trial court erred in granting summary judgment to defendants since the court provided no statutory analysis for its conclusion that the new construction was not an "accessory building" but instead simply accepted the zoning inspector's conclusory averment in his affidavit that the new construction was an "addition."

Retirement system/Overpayment. Ruf v. Ohio Pub. Emps. Retirement Sys., 2021-Ohio-4389 | 10th Appellate District | 12/14/2021 Denial of petition for writ of mandamus filed by relator seeking to compel respondent-public retirement system to stop withholding payments from her retirement account to recoup accrued overpayments is affirmed since, even if respondent was at fault for relator's son remaining on incorrect health care plan, respondent had an obligation under R.C. 145.563 to recoup payments made to son to which he was not entitled.

Public records/Jurisdiction. State ex rel. Crenshaw v. King, 2021-Ohio-4433 | 8th Appellate District | 12/14/2021
Relator's petition for a writ of mandamus and for injunctive relief claiming that respondent improperly destroyed or threatened to destroy public records is dismissed by the court of appeals for lack of jurisdiction since the exclusive remedy for the failure to comply with R.C. 149.351 and the provisions specified in the first section of that statute is to file a civil action in the appropriate common pleas court.

Public nuisance/Standing. Cincinnati v. Twang, L.L.C., 2021-Ohio-4387 | 1st Appellate District | 12/15/2021 In city's action against property owner for unpaid fees and fines arising from code violations on vacant property, summary judgment for city was not error since owner lacked statutory standing under R.C. 3767.41 to bring a public-nuisance counterclaim seeking demolition of building because, as owner, he was not a proper plaintiff to litigate such a claim, and the city was not required to establish that fees and fines due under ordinances did not offend the excessive fines clause.

Immunity. Callaway v. The Akron Police Dept., 2021-Ohio-4412 | 9th Appellate District | 12/15/2021 In plaintiff's negligence action against defendants, including police officer, for injuries sustained when police dog bit plaintiff while defendant was apprehending suspect in plaintiff's apartment, summary judgment for defendant was error where, although defendant was engaging in a governmental function at time of

incident, parties gave differing accounts of what transpired, and a question remains as to whether the dog was released into plaintiff's apartment without warning and whether defendant's actions were wanton or reckless as exception to immunity, R.C. 2744.03(A).

Promissory estoppel. Speed Way Transp., L.L.C. v. Gahanna, 2021-Ohio-4455 | 10th Appellate District | 12/16/2021 In towing company's promissory estoppel action against the city for acting in bad faith in denying its application for towing contract where the city argued that promissory estoppel is inapplicable when a political subdivision is engaged in a governmental function, the trial court erred in granting the city's motion for judgment on the pleadings since the city failed to cite any part of the complaint in its extrinsic factual allegations, and therefore there was no basis to conclude that the city was engaging in governmental function, and controversy exists regarding whether defendant based its decision to award towing contract on criteria in request for proposal, Civ.R. 12(C).

Mandamus/Prohibition/Standing. State ex rel. Ohio Stands Up!, Inc. v. DeWine, 2021-Ohio-4382 | Supreme Court of Ohio | 12/16/2021 Relator-corporation's petition for writs of prohibition and mandamus seeking to prevent respondents-state officials from, inter alia, allegedly violating the constitution by spending public funds on a vaccination-related lottery when those funds were not appropriated by the General Assembly for that purpose is dismissed for lack of standing since relator did not show that it sustained an injury that is fairly traceable to the respondents' conduct and that the injury is likely to be redressed by the requested relief; as well, the public-right doctrine does not apply in the instant case.

Public records/Statutory damages. State ex rel. Ellis v. Cleveland Police Forensic Laboratory, 2021-Ohio-4487 | Supreme Court of Ohio | 12/23/2021 Denial of requester-inmate's request for statutory damages arising from city's failure to provide its records retention schedule, which did not relate to a criminal investigation or prosecution but was part of a larger improper request, is reversed since statutory damages under R.C. 149.43(C)(2) are mandatory whenever a public-records custodian fails to comply with her obligation[s]; while the court of appeals found that the city's denial of the records request was reasonable, which is one of the findings to support a reduction in damages, the court of appeals denied, rather than reduced, requester's damages.

Immunity. Anderson v. Westlake, 2021-Ohio-4582 | 9th Appellate District | 12/29/2021 In an action alleging willful and/or reckless conduct by police officers after plaintiffs were injured when a driver being chased by police lost control of his truck after it was driven over stop sticks, the trial court did not err in granting summary judgment to officers on the basis of governmental immunity where plaintiffs did not allege that officers acted in a wanton manner and reasonable minds could only conclude that the officers' operation of their cruisers did not constitute willful misconduct, so they were entitled to immunity, R.C. 2744.02(B)(1)(a).

Public records. State ex rel. Ware v. Walsh, 2021-Ohio-4585 | 9th Appellate District | 12/29/2021 Inmate's petition for a writ of mandamus to compel respondent to produce several types of public records is denied where, with respect to personnel records, respondent has already provided the requested documents, and with respect to the serology report from inmate's criminal case, his arrest report, and his direct indictment information sheet, inmate failed to obtain a finding from his sentencing judge that the information sought in the public record is necessary to support a justiciable claim, R.C. 149.43(B)(8).

Standing. State ex rel. Wengerd v. Underwood, 2021-Ohio-4601 | 9th Appellate District | 12/30/2021 In taxpayer's petition for a writ of mandamus to compel auditor to ascertain, apportion and order a division of certain funds and property under R.C. 505.371(D) to taxpayer's township pursuant to fire district joint resolution for such an apportionment on withdrawal of a municipality from the district, the auditor's motion for judgment on the pleadings is granted since taxpayer has failed to allege any damage to himself or his property that differs in character from any damages sustained by the public generally and he lacks standing to institute a common-law taxpayer action; also, because taxpayer has not alleged a rare and extraordinary issue that threatens serious public injury, he lacks standing to proceed under the public-right doctrine.

Public records/Vexatious litigator. Miller v. Ohio Governor, 2022-Ohio-320 | Court of Claims | 01/05/2022 Requester's appeal of dismissal of her public records complaint on recommendation of respondent-governor and under the vexatious litigator statutory provision is dismissed since requester was previously found to be a vexatious litigator and she did not receive permission from the court to file the instant complaint, so dismissal is required, R.C. 2323.52(I).

Public records. Sengstock v. Twinsburg, 2022-Ohio-314 | Court of Claims | 01/06/2022 In action alleging denial of request for public records, the trial court adopts special master's recommendation for a finding that the respondent failed to produce public records in violation of R.C. 149.43(B)(1) and (2), for the court to issue an order directing respondent to disclose the redacted employee names in the records, for the court to issue an order directing requester to recover from respondent the costs associated with this action, including the filing fee, and for the court to assess court costs to respondent.

Immunity/Landlord-Tenant. Johnson v. Cincinnati Metro. Hous. Auth., 2022-Ohio-26 | 1st Appellate District | 01/07/2022 In tenant's negligence, breach of implied warranty of habitability and related claims action against housing authority for injuries sustained when she slipped on a mat and fell downstairs, the trial court erred in denying authority's motion for summary judgment that argued governmental immunity where violation of Landlord-Tenant Act under R.C. Ch. 5321 does not expressly impose liability on a political subdivision, as required for R.C. 2744.02(B)(5).

Public records/Federal claim/Jurisdiction. Portsmouth Daily Times v. New Boston, 2022-Ohio-317 | Court of Claims | 01/11/2022 In requestor-newspaper's action seeking to compel respondent-village to provide a report, special master's recommendation to grant respondent's motion to dismiss is adopted where requester relied solely on the federal Freedom of Information Act, and the Act is unenforceable against a non-federal entity such as respondent; the special master did err in finding that the court lacked jurisdiction since R.C.

2743.75(A) established that, except for a court that hears a mandamus action pursuant to R.C. 149.43(B), the Court of Claims has exclusive authority to adjudicate or resolve complaints based on alleged violations of R.C. 149.43(B) and both parties voluntarily submitted to the jurisdiction of the court.

Public records/Existing records. Ohio Records Analysis v. Ohio Dept. of Adm. Servs., 2022-Ohio-316 | Court of Claims | 01/12/2022 In requester's action seeking to compel respondent-department of administrative services to provide public records concerning multi-agency radio communications, the special master recommends that the court deny the request since requester failed to show that requested documents are existing records kept by respondent, and therefore applicability of exceptions from disclosure under R.C. 149.433 need not be considered.

Open Meetings Act. State ex rel. Ames v. Portage Cty. Bd. of Commrs., 2022-Ohio-105 | 11th Appellate District | 01/18/2022 In relator's mandamus, declaratory judgment and injunction action alleging that respondent-board of commissioners violated the Open Meetings Act when it held an executive session to discuss matters concerning a public employee, the trial court's judgment in favor of respondent is affirmed since employment is identified under R.C. 121.22(G)(1) as a proper purpose for executive session, the substance of what was considered in the session reasonably falls under the category of employment, and the sole focus of the session was whether to offer an employment position and there was no need to identify more than one purpose for holding the session.

Public records/Damages/Costs. State ex rel. Ware v. Fankhauser, 2022-Ohio-172 | 11th Appellate District | 01/24/2022 In relator's action seeking statutory damages and court costs associated with his request for public records after claim for writ of mandamus was rendered moot by respondent's compliance with request, summary judgment in favor of relator is granted since relator is entitled to maximum damages under R.C. 149.43(C) because of respondent's delay in providing documents, and costs are awarded because respondent acted in bad faith in consciously disregarding records request for over a year before complying.

Public records. State ex rel. Ames v. Baker, Dublikar, Beck, Wiley & Mathews, 2022-Ohio-171 | 11th Appellate District | 01/24/2022 Petition for a writ of mandamus to compel respondents to provide unredacted copies of invoices for legal services provided to township is dismissed since respondents complied with their obligations under R.C. 149.43 where relator has been provided with the legal invoices he sought, which were properly redacted per the attorney-client privilege exception, and relator cannot establish claims for statutory damages, attorney fees and/or costs.

Public records/Objections. McCoy v. Madison Corr. Inst., 2022-Ohio-313 | Court of Claims | 01/27/2022 In public records request action to obtain certain video recordings from respondent where special master recommends that the request is moot since requester did not prove that any further responsive video records existed but recommends assessing costs to respondent for not providing records for eight months, the court denies requester's objections to special master's recommendation on reasoning that requester failed to comply with R.C. 2743.75(F)(2) procedural requirements; special master identified the pertinent issues and reached the correct legal determination.

Public records. State ex rel. Horton v. Kilbane, 2022-Ohio-205 | Supreme Court of Ohio | 02/01/2022 Petition for a writ of mandamus to provide public records to requester is denied since, with regard to one record, the requester has impermissibly broadened the scope of her request, and with regard to the other record, respondent-city presented evidence establishing that it does not possess the record, and a public office does not have a clear legal duty to furnish records that are not in its possession or control; requester is awarded statutory damages for respondent's unreasonable delay in providing three of the records, R.C. 149.43(B), but the statute does not permit stacking of statutory damages based on what is essentially the same records request.

Public records/Death certificates. Walsh v. Ohio Dept. of Health, 2022-Ohio-272 | 10th Appellate District | 02/01/2022 Dismissal of relator's petition for a writ of mandamus seeking to compel respondent-department of health to comply with relator's public records request to provide details from death records was not error since R.C. 3701.17(B) restricts release of personal confidential information regarding deceased individuals, death certificates are not public records for purpose of R.C. 149.43, and death certificates are available to the public only under the statutorily-mandated procedure of R.C. 3705.23.

Court-ordered expenditures. State ex rel. Grendell v. Walder, 2022-Ohio-204 | Supreme Court of Ohio | 02/01/2022 Judge's petition for a writ of mandamus to compel county auditor to issue warrants on the county treasurer to pay for court-ordered expenditures is granted to make payment for robocalls, newspaper advertisements, website upgrades, mileage reimbursements and publication fees since amendments to R.C. 319.16 effected procedural changes that justify their application in the instant case where the addition of division (A)(2) to the statute broadens the means by which a judge may obtain a warrant and the addition of division (D) modifies the means by which an auditor may question an expenditure.

Public records/Inmate affidavit. State ex rel. Bey v. Bur. of Sentence Computation, 2022-Ohio-236 | Supreme Court of Ohio | 02/02/2022 Dismissal of inmate's two petitions for writs of mandamus to compel production of public records is affirmed since the inmate failed to comply with the affidavit requirements in R.C. 2969.25(A); respondent-bureau's failure to raise the affidavit compliance issue in its answer did not preclude respondent from asserting it for the first time in its merit brief before the court of appeals since the affidavit requirement is mandatory, it is not an affirmative defense, and inmate complaints can be dismissed sua sponte for not meeting this requirement.

Public records. State ex rel. Bloodworth v. Toledo Corr. Inst., 2022-Ohio-346 | 6th Appellate District | 02/02/2022 Relator-inmate's petition for a writ of mandamus seeking to compel respondent-correctional institution to provide requested records is denied since respondent submitted affidavits showing it did not maintain the requested records and was not responsible to respond to relator's records request, R.C. 149.43.

Public records/Discovery. Advance Local Media, L.L.C. v. Ohio State Univ., 2022-Ohio-321 | Court of Claims | 02/04/2022 Public records request claim is dismissed without prejudice pursuant to R.C. 2743.75(D)(2) where the special master concluded that the resolution of the dispute would unlikely be expeditious if litigated under the procedures available in R.C. 2743.75 since the unavailability of discovery would likely require multiple voluminous inquiries, and under the circumstances of the instant case, civil discovery and less restrictive timelines may be available to the requester in a mandamus action filed under R.C. 149.43.

Immunity. Volny v. Portage Cty., 2022-Ohio-338 | 11th Appellate District | 02/07/2022 In motorcyclists' negligence action against county for injuries sustained in motorcycle accident on unsafe road, the trial court did not err in denying county's governmental immunity-based motion for summary judgment since the R.C. 2744.02(B)(3) exception to immunity applies because the question remains whether the county negligently failed to keep its public road in repair, and the R.C. 2744.03(A)(5) defense to liability where the exercise of judgment or discretion is involved does not apply because the alleged hole in construction area of road was easily discoverable and its elimination did not involve discretion or engineering judgment.

Open Meetings Act. State ex rel. Ames v. Portage Cty. Bd. of Commrs., 2022-Ohio-336 | 11th Appellate District | 02/07/2022 Relator's petition for a writ of mandamus alleging that respondent-county board of commissioners violated the Open Meetings Act (OMA) and seeking to compel future compliance is denied where, even if the board's use of a consent agenda constituted violation of OMA, the board no longer uses a consent agenda for county business, therefore precluding mandamus relief, and the board's failure to prepare full minutes of meeting did not constitute failure to comply with R.C. 149.43(B) such that relator is entitled to statutory damages, R.C. 121.22(I).

Public records. State ex rel. Ware v. Crawford, 2022-Ohio-295 | Supreme Court of Ohio | 02/08/2022 Petition for writ of mandamus to compel respondent to provide records which the parties agree are public records subject to disclosure, but disagree whether respondent provided the records, writ is granted in part since the respondent-custodian has the burden of proof to demonstrate compliance with the obligation to provide copies of public records and respondent has provided no evidence to corroborate her assertion that she mailed the documents to requester, R.C. 149.43.

Public records/Death records. Miller v. Ohio Dept. of Health, 2022-Ohio-357 | 10th Appellate District | 02/08/2022 In requester's action seeking to compel respondent-department of health to provide report of details of all deaths caused by the pandemic virus, the trial court erred in adopting the special master's recommendation ordering respondent to provide requested records since R.C. 3701.17 prohibits release of protected health information contained within requested records, and although information on death certificates is obtainable by the public under R.C. 3705.23, the requested records in this case contain information exempt from the definition of public records under R.C. 149.43.

Public records/Parole. State ex rel. Hill v. Adult Parole Officer Campbell, 2022-Ohio-354 | 10th Appellate District | 02/08/2022 In relator-inmate's action seeking to compel respondents-parole officer and related state departments to provide all documents related to denial of his eligibility for transitional control, a limited writ of mandamus is granted for respondents to research the resource material on which ineligibility was determined, and if the resource material exists, respondents have a clear legal duty to provide it to relator since the requested records were not exempt from disclosure pursuant to R.C. 5120.21(F) because they are not considered records of inmates, and R.C. 5149.07 provides that respondents shall maintain records pertaining to work of the parole authority, R.C. 149.43.

Taking of property. State ex rel. Duncan v. Am. Transm. Sys., Inc., 2022-Ohio-323 | Supreme Court of Ohio | 02/09/2022 Dismissal for failure to state a claim, Civ.R. 12(B)(6), of relator's petition for a writ of mandamus seeking commencement of an appropriation proceeding regarding the right-of-way adjacent to relator's property was not error since relator failed to establish a taking of his property where he alleged that installation of power lines along the right-of-way posed a risk of harm, but he did not cite any authority that allegations of such risk were sufficient to establish an actionable taking; also, the court of appeals correctly ruled that it lacked original jurisdiction to decide nuisance claims or to grant declaratory, injunctive or compensatory relief that relator requested.

Public records/Public office. State ex rel. Fair Hous. Opportunities of Northwest Ohio v. Ohio Fair Plan, 2022-Ohio-385 | 10th Appellate District | 02/10/2022 Petition for writ of mandamus to compel production of public records is granted since, inter alia, respondent is a public office under R.C. 149.011 since respondent and its board of governors, its purpose, and its operation were established by enactment of R.C. 3929.41 through 3929.49, R.C. 3929.47 and Ohio Adm. Code 3901-1-18(J)(2) provide that decisions of respondent and its board of governors are subject to the administrative appeals process and to judicial review under R.C. 119, and R.C. 3929.48 grants limited immunity to respondent and its employees and excludes certain of its records from being public documents.

Public records/Inmate's request. State ex rel. Chapman v. Byrd, 2022-Ohio-469 | 8th Appellate District | 02/11/2022 In relator-inmate's action seeking to compel respondents-clerk of courts and prosecutor to provide requested witness statements from his underlying case, petition for writ of mandamus is dismissed since relator omitted federal habeas corpus action from his prior lawsuit affidavit, and his supplemental affidavit that included the federal case could not excuse his failure to comply with mandatory requirements of R.C. 2969.25 and 149.43(B)(8).

Immunity. Clemons v. Cardington, 2022-Ohio-513 | 5th Appellate District | 02/18/2022 In festival attendee's negligence action against village for injuries sustained when she fell while stepping on catch basin set in crumbling pavement during festival, the trial court did not err in denying village's immunity-based motion for summary judgment where village participated in operation of festival by providing services and questions remain as to whether village's participation rose to the level of proprietary function and whether attendee's damages were caused by negligence of village's employees in performance of a proprietary function, R.C. 2744.03.

Public Utilities

Electricity. Cleveland Elec. Illum. Co. v. Cleveland, 2021-Ohio-4463 | Supreme Court of Ohio | 12/21/2021
In utility's action claiming that city violated Ohio Const. Art. XVIII, Sec. 4 and 6 by purchasing electricity solely for the purpose of re-selling it to customers outside its boundaries, the court of appeals' determination that the trial court erred in granting summary judgment to the city is affirmed since the utility presented evidence from which a reasonable factfinder could conclude that the city purchased at least some electricity solely for the purpose of re-selling it to others outside its boundaries where the city entered into 10-year agreement with another city to serve as exclusive electricity supplier; case is remanded to the trial court.

Real Property

Zoning/Appropriation. Devol v. Logan, 2021-Ohio-4164 | 4th Appellate District | 11/22/2021 In appeal of city zoning board's denial of application for a permit to install a driveway to access a state route following appropriation by department of transportation of a portion of applicant's property, trial court did not err in affirming zoning board's decision where the state department owned and controlled the parcel over which applicant sought access, the parcel had been acquired as part of a safety project to remove access to the state route, and the zoning inspector had authority under R.C. Ch. 519 to review deeds to properties at issue in determining whether to issue permit.

Appropriation/Settlement. Wray v. Ice House Ventures, L.L.C., 2021-Ohio-4195 | 10th Appellate District | 11/30/2021 In plaintiff-department of transportation's action to appropriate a portion of defendant's property where the parties' appraisers reached different conclusions about the value of the property, the trial court erred in enforcing the parties' settlement agreement which allowed damages to be paid to defendant if plaintiff failed to deliver a portion of its consideration for appropriated property; the agreement was unclear as to whether damages referred to eminent domain damages or contract damages, and the agreement was unenforceable because there was no meeting of the minds.

Lease/Jurisdiction. Heredia Realty, L.L.C. v. Harvey, 2021-Ohio-4218 | 1st Appellate District | 12/03/2021
In landlord's breach of contract action against tenants to recover damages several years after lease ended, judgment for landlord is affirmed since execution of the lease satisfied the long-arm statute because it gave tenants an interest in real property in the state and also satisfied minimum contacts for suits arising from the lease, R.C. 2307.382(A)(8).

Zoning/Conditional use permit. Kinney v. Newtown Bd. of Zoning Appeals, 2021-Ohio-4217 | 1st Appellate District | 12/03/2021 In property owners' application for conditional use permit to provide facilities for a youth soccer club in residential district, the trial court did not err in reversing the board of zoning appeals' denial of permit since property owners' traffic engineer showed that traffic volume would remain at an acceptable level, traffic congestion on street is a problem throughout day and not just during soccer club use, and proposed soccer field aligns with permitted uses of property, R.C. 2506.04.

Contract. Kertes Ents., L.L.C. v. Sanders, 2021-Ohio-4308 | 8th Appellate District | 12/09/2021 In home builder's breach of contract action against purchasers for backing out of initial agreement to purchase home, summary judgment in favor of purchasers was not error where the written purchase agreement contained several previously undisclosed fees which were part of the price of the property, the agreement had an integration clause designating it as the final agreement of the parties, and because the parties never agreed on terms of the purchase agreement, there was no meeting of the minds and therefore no contract.

Lease term/Security deposit. K&D Mgt., L.L.C. v. Jones, 2021-Ohio-4310 | 8th Appellate District | 12/09/2021
In landlord's action against tenant for breaching lease agreement by not vacating apartment when lease ended, summary judgment in favor of landlord was not error since landlord treated tenant as a trespasser rather than holding her to a new lease term, and tenant was in breach of agreement by remaining in apartment; however, tenant owes rent for only days she remained on premises and not entire month, and landlord improperly withheld her security deposit under lease and is liable for double damages pursuant to R.C. 5321.16.

Foreclosure/Res judicata. Bayview Loan Servicing, L.L.C. v. Humphreys, 2021-Ohio-4324 | 10th Appellate District | 12/10/2021 In loan servicer's foreclosure action against homeowner for default on note and mortgage, the trial court did not err in denying homeowner's motion to vacate judgment entry of foreclosure where, even though loan servicer's motion for leave to amend its previous claim for deed reformation to include foreclosure was denied, denial of the motion was not a final judgment on the merits of the foreclosure claim, and therefore the current claim is not barred by res judicata; there are fact issues regarding the amount advanced by the loan servicer for payment of property taxes.

Foreclosure/Service. Patrick v. Ellman, 2021-Ohio-4354 | 12th Appellate District | 12/13/2021 In heir's appeal of denial of motion to vacate void default judgment in tax foreclosure and sale of residential property case, asserting a lack of service, trial court's judgment is affirmed since county treasurer requested service by publication pursuant to Civ.R. 4.4(A)(1) after conducting a search of county probate court records and an internet search for decedent's obituary, and heir's assertion that additional records exist that could have led to her identification was mere speculation.

Appeal. Smith v. Warner, 2021-Ohio-4351 | 9th Appellate District | 12/13/2021
In plaintiff's action to quiet title to property and for declaratory judgment, resulting in summary judgment to lending bank on reasoning that plaintiff failed to establish ownership of the property, is dismissed as moot since plaintiff sold the property to a third party, the bank discharged the mortgage, the proceeds of the sale have been distributed, and plaintiff no longer had any interest or expectancy in the property or any connection with the property.

Limitations. 2774-76 Main, L.L.C. v. 2774 E. Main St., L.L.C., 2021-Ohio-4461 | 10th Appellate District | 12/16/2021 In plaintiff-property owner's action seeking partition of real estate in which defendant also held an interest, summary judgment in favor of plaintiff was not error since defendant's counterclaim seeking to quiet title and reformation of earlier deed is barred

by the statute of limitations under R.C. 2305.04, defendant was not entitled to a larger interest than it received from predecessor, and the parties never appeared as co-grantees to deed and were each conveyed one-half interest in property by deeds through separate chains of title.

Eviction/Appeal. Farla, L.L.C. v. Pretlow, 2021-Ohio-4468 | 9th Appellate District | 12/20/2021 In plaintiff-property owner's forcible entry and detainer action against defendant for trespassing on property, judgment in favor of plaintiff was not error since defendant was not entitled to a stay of execution under the order temporarily halting evictions during the pandemic because he was not occupying property under a rental agreement, his assertion that he had filed for bankruptcy did not automatically stay the judgment because eviction was not based on nonpayment of rent, and because defendant vacated property and plaintiff is in possession, appeal is dismissed as moot.

Exclusive-use clause. Mr. Pulpstone, L.L.C. v. The Shops on 58, L.L.C., 2021-Ohio-4467 | 9th Appellate District | 12/20/2021 In action by juice bar, which sells specialty juice, smoothie, wrap and frozen yogurt, seeking a declaratory judgment against defendant-shopping center to exclude competitor from leasing space in violation of lease agreement's exclusive-use clause, trial court erred in granting summary judgment to defendant since the court resolved competing definitions of the term "smoothie" without considering the parties' intentions, as reflected in the context of the agreement itself, and therefore the term should not have been found unambiguous.

Eviction/Counterclaims. Phillips v. Thompson, 2021-Ohio-4500 | 9th Appellate District | 12/22/2021
In landlord's forcible entry and detainer action resulting in issuance of a writ of restitution after which tenants filed counterclaims, the trial court did not err in striking counterclaims since the purpose behind forcible entry and detainer actions is to provide a summary, extraordinary and speedy method for the recovery of possession of real estate; the Civil Rules do not apply in forcible entry and detainer proceedings to the extent they would be inapplicable, and tenants did not move for leave to file counterclaims, Civ.R. 1(C)(3) and 12(F).

Condominium restrictions. Phillips v. Acacia on the Green, 2021-Ohio-4521 | 8th Appellate District | 12/23/2021
In condominium unit owners' action against condominium association alleging violations of state laws and contesting association's denial of requests to have personal patio grills, summary judgment in favor of association was not error since unit owners do not own or enjoy unrestricted exclusive use of patios, restriction on patio grills is permissible under state law because it is reasonable, restriction is outlined in condominium declaration in existence prior to purchase of units, and association did not act in bad faith in enforcing prohibition, R.C. 5311.19.

Lease. 12100 Buckeye Ltd. v. Council for Economic Opportunities in Greater Cleveland, 2021-Ohio-4517 | 8th Appellate District | 12/23/2021
In landlord's action for breach of lease and related claims arising from tenant's continued occupancy of premises after expiration of the lease and later vacation of premises, the trial court did not err in granting summary judgment to tenant since the tenant did not give required written notice to landlord of intention to renew the lease for a five-year term as provided in the lease, tenant's issuance of purchase orders for annual rent after expiration of the lease could not be construed as renewing the lease, and pursuant to the lease, tenant was a holdover tenant paying monthly rent until it vacated the property.

Homeowners' association fees. Settlers Walk Home Owners' Assn. v. Phoenix Settlers Walk, Inc., 2021-Ohio-4547 | 12th Appellate District | 12/27/2021 In action by homeowners' association to recover unpaid assessments during a specific period from owner of lots located within the residential community, resulting in judgment for association and later an order of restitution to owner because of miscalculations, trial court's judgment is affirmed, as modified, to order restitution to owner of all moneys it erroneously paid to association for assessments, late fees and attorney fees for the years in question.

Encroachment. Brady v. Haines, 2021-Ohio-4565 | 3rd Appellate District | 12/27/2021 In plaintiff-property owner's action seeking to remediate improper encroachment after survey showed that a corner of defendant-neighbor's garage was on plaintiff's land, the trial court did not err in denying injunction since the encroachment was not intentional or reckless where it was caused by a prior survey mistake, the encroachment would have no practical effect on plaintiff's ability to use land as evidenced by the fact that it had been continuously used without complaint for several years, and moving the garage would create enormous disparity in resulting hardships of parties.

Eviction/Appeal. Art Paradise, Inc. v. Washington, 2021-Ohio-4586 | 2nd Appellate District | 12/29/2021
In a forcible entry and detainer action by landlord against tenant in which the trial court issued a writ of restitution and tenant filed the instant appeal but, in doing so, she did not seek a stay of the restitution order nor did she post a supersedeas bond, tenant's appeal is dismissed as being moot since she vacated the premises and there is no longer a justiciable controversy.

Eviction/Security deposit. Amba Invests. v. Clark, 2022-Ohio-43 | 12th Appellate District | 01/10/2022
In landlord's forcible entry and detainer action against tenant for failure to pay rent, judgment in favor of landlord was not error where, although the court made incorrect statements about landlord's failure to provide written itemized statement of tenant's security deposit as required under R.C. 5321.16(B), the entire security deposit was lawfully withheld for application toward tenant's past due rent, and therefore the error was harmless.

Res judicata. State ex rel. Peaspanen v. Ashtabula Cty. Auditor's Office, 2022-Ohio-166 | 11th Appellate District | 01/24/2022 Petition for a writ of mandamus to compel respondents to pre-approve deeds concerning a specific property and then subsequently transferring all lots and tracts identified in those deeds is denied as being barred by the doctrine of res judicata since successive transfers of the property did not change the recorded legal description and relator is attempting to re-litigate the identical issues with the same parties over the same property that have already been decided by the Supreme Court of Ohio.

Construction/Appeal. Sheetz, Inc. v. Solomon Realty Co., L.L.C., 2022-Ohio-202 | 5th Appellate District | 01/27/2022
In action by plaintiff-lessee against defendant-lessor for a declaratory judgment after defendant informed plaintiff's contractors that they were

being denied access to the demised property to perform work, resulting in judgment for plaintiff, defendant's appeal is dismissed as moot since defendant failed to obtain a stay and plaintiff had started construction; it is well established that in cases such as this where an appeal involves the construction of a building, if a party fails to obtain a stay of execution before construction commences, the appeal is rendered moot.

Foreclosure. Stark Cty. Treasurer v. Williamson, 2022-Ohio-203 | 5th Appellate District | 01/27/2022 In tax foreclosure action, the trial court did not err in granting summary judgment to treasurer since treasurer alleged in its complaint that all the taxes and assessments, penalties, interest, and charges on the parcel were delinquent and that the taxpayer was the owner of the parcel, evidence showed that taxpayer breached the terms of repayment contract, and her claim that she made partial payment was without merit.

Foreclosure/Face-to-face meeting. Ocwen Loan Servicing, Inc. v. McBenttes, 2022-Ohio-278 | 9th Appellate District | 02/02/2022 In loan servicer's foreclosure action alleging borrowers' default on a promissory note secured by the subject property, the trial court did not err in granting summary judgment to servicer where there was no genuine issue of material fact as to whether servicer was entitled to the 200-mile exemption from the face-to-face meeting requirements of 24 C.F.R. 203.604 (c)(2) since the affidavit of borrowers' attorney that his search of various internet sites led to the conclusion that the servicer had an office within 175 miles of the mortgaged property does not constitute evidence based on personal knowledge.

Eviction/Contract. Abarzua v. Johnson, 2022-Ohio-277 | 9th Appellate District | 02/02/2022 In property buyer's forcible entry and detainer action against seller after seller moved back into residence following sale and refused to leave, judgment for plaintiff is affirmed where the court had authority to adjudicate the dispute pursuant to R.C. 1923.01, the parties' agreement was of critical importance in resolving the controversy, and the court's consideration of the agreement was not unreasonable.

Foreclosure/Intervention. Cuyahoga Cty. Treasurer v. Unknown Heirs of Russell, 2022-Ohio-309 | 8th Appellate District | 02/03/2022 In county treasurer's tax foreclosure action which led to sheriff's sale of property and appellant-loan servicer was assigned the mortgage and acquired the note, the trial court did not err in denying appellant's motion to intervene, seeking distribution of excess sale proceeds, where appellant is not a party to the action, original bank's mortgage interest was extinguished with confirmation of sale, appellant's interest was not assigned until months later, and because bank had no interest in the proceeds of sale, appellant as successor cannot claim interest either, Civ.R. 24(A).

Foreclosure/Appeal. Cuyahoga Cty. Treasurer v. Holloway, 2022-Ohio-301 | 8th Appellate District | 02/03/2022 Appeal of judgment granting county treasurer's motion to reinstate erroneously vacated decree of tax foreclosure is dismissed as moot since the property had been forfeited to the state and later sold to a third party who paid the delinquent taxes.

Fraudulent inducement. Bockelman v. Griffin, 2022-Ohio-439 | 11th Appellate District | 02/14/2022 In property buyers' fraudulent inducement action alleging that seller made false representations concerning sewer line assessments in the course of negotiating sale of property, summary judgment in favor of buyers was error since question remains as to what seller knew about assessments for sewer project, her awareness of necessity of tying into sewer line does not establish knowledge of assessments as a matter of law, she denied receiving a letter advising of assessments, and if she lacked knowledge of assessments, she could not have had intent to deceive, R.C. 5302.30.

Securities and Capital Markets

Contract breach. SMS Fin. XXVI, L.L.C. v. Waxman Chabad Ctr., 2021-Ohio-4174 | 8th Appellate District | 11/24/2021 In plaintiff-investment firm's breach of contract action against defendants for default on notes, summary judgment for defendants was not error since one note was lost and plaintiff did not possess the note at the time it was lost, and while the other note at issue was recently found, the allonges meant to indorse the note to the plaintiff were never attached to the original note and are therefore ineffective as indorsements of the note, so plaintiff was not entitled to enforce them under R.C. 1303.31(A), and amended R.C. 1303.38 does not apply retroactively to entitle plaintiff to enforce the notes.

Taxation

Real property. ABC TGAB, L.L.C. v. Stark Cty. Bd. of Revision, 2021-Ohio-4185 | 5th Appellate District | 11/24/2021 In taxpayer's appeal of tax valuations of its properties, the trial court did not err in affirming the decision of the board of revision since R.C. 5713.03 creates a presumption that property's recent sale price in arm's-length transaction constitutes the best evidence of monetary value, and opinions as to value presented by taxpayer's appraiser were flawed because parcels were analyzed in pieces rather than as a whole and it was not proper to categorize some of the parcels as residential when they were zoned as commercial.

City income/Temporary legislation. Buckeye Inst. v. Kilgore, 2021-Ohio-4196 | 10th Appellate District | 11/30/2021 In employer's action to declare invalid pandemic-related temporary tax legislation that treats, for purposes of the municipal tax code, work performed at home or at certain other locations as a day at employee's "principal place of work," the trial court did not err in granting city's motion to dismiss since the legislation is compatible with the state's authority to pass laws to temporarily structure municipal income tax to mitigate economic impact of crisis, and due process is not violated because the city affords employees a place to work protected by municipal government, Civ.R. 12(B)(6).

Sales. Thorbahn Ents., L.L.C. v. Ohio Dept. of Taxation, 2021-Ohio-4457 | 10th Appellate District | 12/16/2021 In business' action in the Court of Claims against department of taxation alleging that auditor frivolously disregarded applicable statutes which resulted in an unreasonably high sales tax assessment that was incorrectly calculated, summary judgment in favor of department was not error where, although cash register tapes are considered primary records, tapes provided by business were incomplete under R.C. 5739.11 because they did not distinguish between taxable and non-taxable items, some tapes were missing, and secondary records must be

supported by complete primary records; also, there is a dissent in this case.

Real property/Standing. State ex rel. Ames v. Portage Cty. Bd. of Revision, 2021-Ohio-4486 | Supreme Court of Ohio | 12/23/2021 Citizen's petition for writ of mandamus to compel the board of revision to create hearing boards and to revoke any and all designations of alternate delegates to serve on the board during scheduled appeal hearings is dismissed for lack of standing since the citizen does not argue that he is personally harmed by the board's practice of appointing alternates without first creating separate hearing boards; also, R.C. 5715.19(A)(1) that authorizes the filing of complaints with the county auditor to challenge the board of revision does not apply since the instant complaint does not challenge a valuation determination, recoupment charge or any other substantive decision by the board.

Income/Non-residents. Schaad v. Alder, 2022-Ohio-340 | 1st Appellate District | 02/07/2022 In taxpayer's action against city seeking refund of municipal income tax for days that he worked from home outside the city due to pandemic stay-at-home order, the trial court did not err in granting city finance director's motion to dismiss since the city followed state law in imposing a tax liability on non-residents who work and receive pay in municipality, and the state's taxing jurisdiction may be exercised over all of resident's income based on in personam jurisdiction over resident.

Real property. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 2022-Ohio-355 | 10th Appellate District | 02/08/2022 In board of education's action seeking increase in taxable value of properties, the Board of Tax Appeals (BTA) erred in its distribution of value between the land and improvements and in adopting county auditor's original land values where the board of education's appraiser's reports provided evidence negating original values, there was no other evidence in support of county auditor's valuation, the BTA made contradictory statements regarding its rationale for rejecting appraiser's valuation, and the BTA adopted the original valuation without conducting its own independent valuation.

Appeal. Ohio State Dept. of Taxation v. Branch, 2022-Ohio-391 | 10th Appellate District | 02/10/2022 In case in which state tax department filed three certificates of judgment against taxpayer in the common pleas court, taxpayer's appeal is dismissed, even though department filed judgment liens, since department did not yet initiate foreclosure, seek a writ of execution or pursue other means to enforce those liens, so there was no judgment or order related to any enforcement action and there was no order affecting a substantial right of taxpayer.

Use/Penalty. Karr v. McClain, 2022-Ohio-449 | Supreme Court of Ohio | 02/17/2022 Abatement by the Board of Tax Appeals of penalty imposed on taxpayer was error where taxpayer purchased a truck, declined to pay use tax, claiming that the transportation-for-hire exemption applied to his purchase under R.C. 5739.02(B)(32), and then failed to prove his entitlement to the exemption, prompting the tax commissioner to assess unpaid tax, add pre-assessment interest and impose a penalty, and R.C. 5739.133(A) provides that a penalty may be added to every amount of sales/use tax assessed; by stating that a penalty "may be added," the statute confers discretionary authority on the tax commissioner to impose a penalty in conjunction with an assessment of unpaid sales tax.

Real property/Filing deadline/ Equitable estoppel. Northridge Local Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision, 2022-Ohio-495 | 2nd Appellate District | 02/18/2022
In taxpayer's challenge to its hotel property's valuation during pandemic-induced state of emergency where the board of revision (BOR) reduced the valuation, followed by school board's appeal, board of tax appeals' decision vacating the BOR's reduction because taxpayer failed to meet the claim-filing deadline and ordering dismissal by the BOR is affirmed, even though taxpayer relied on the BOR's website statement that the deadline for filing tax valuation claims was extended; the state's emergency relief statute tolled statutes of limitation and time limitations, but not deadlines, taxpayer's claim was untimely since the R.C. 5715.19 deadline was not tolled, and taxpayer, arguing reliance on BOR's statement, is precluded from relief since the doctrine of equitable estoppel is inapplicable against political subdivisions.

Torts

Negligence/Medical claim. Beair v. Mgt. & Training Corp., 2021-Ohio-4110 | 3rd Appellate District | 11/22/2021
In plaintiff-inmate's negligence action against defendant-operator of medical facility at correctional center, alleging failure to provide adequate medical care, trial court erred in granting defendant's motion for summary judgment where plaintiff alleged negligence claims which were not barred by the statute of repose for medical claims under R.C. 2305.113, issue preclusion does not operate to prevent claims because previous federal court judgment was not final, and even if issue were precluded, the federal court found that plaintiff had adequately alleged his non-medical negligence claims.

Negligence. Snay v. Burr, 2021-Ohio-4113 | Supreme Court of Ohio | 11/24/2021 In negligence action in which plaintiff was injured when his vehicle swerved presumably on ice and struck defendants' mailbox located on their property adjacent to road, summary judgment in favor of defendants, affirmed by the court of appeals, is affirmed since defendants' mailbox did not present a hazard to ordinary travel on the regularly traveled portion of the road, and because plaintiff's deviation from the regularly traveled portion of the road did not constitute a normal incident of ordinary travel, defendants did not owe a duty of care to plaintiff with respect to their mailbox.

Negligence. McClain v. The Drinkery, 2021-Ohio-4161 | 1st Appellate District | 11/24/2021 In negligence action by plaintiff after she was injured by falling pool table slabs that were stacked against the wall of a building in alcove area for bar patrons where plaintiff was standing, the trial court erred in granting summary judgment to defendant since the danger was not open and obvious because the slabs were angled against the wall in a manner meant to keep them from falling, prior to the fall the slabs had remained stationary for approximately 15–20 minutes while plaintiff was in the alcove, and it was reasonable for plaintiff to believe that the slabs would not fall over despite placing her hand on the front of the top slab.

Negligence/Recreational user. Thomas v. Chimera, 2021-Ohio-4204 | 5th Appellate District | 11/29/2021
In plaintiffs' negligence action against defendants-property owners for injuries sustained by plaintiffs' daughter when

she fell from a zipline while at a party on one of defendants' parcels of property, summary judgment in favor of defendants was not error since immunity under R.C. 1533.181(A) applies because the zipline sits on nonresidential property, the zipline system was a structure for purposes of R.C. 1533.18, the injured child was a recreational user because she was there by invitation and did not pay a fee to attend party, and close relationship between parties is not consideration for use of premises.

Malicious prosecution. Sweeney v. Myers, 2021-Ohio-4206 | 9th Appellate District | 12/01/2021 Dismissal of plaintiff's malicious prosecution and related claims action, alleging that defendants caused a criminal complaint for theft to be filed in municipal court, is affirmed where the trial court reasoned that, even though the complaint was dismissed, probable cause existed for the criminal charge to be filed and the defendants had an absolute privilege to report alleged criminal activity to the police.

Negligence/Delegable duty. Perko v. Healthcare Servs. Group, Inc., 2021-Ohio-4216 | 8th Appellate District | 12/02/2021 In plaintiff-resident's negligence action against defendant-assisted living home for injuries sustained when she slipped and fell on a floor that was being waxed by an independent contractor, summary judgment in favor of defendant was not error where the non-delegable duty doctrine does not apply under R.C. 5321.01 because defendant is not a landlord of a residential premises and the routine act of waxing a floor is not inherently dangerous, so any negligent acts of contractor did not give rise to the inherently dangerous exception to the delegable duty doctrine.

Legal malpractice. Terry v. Bell, 2021-Ohio-4235 | 6th Appellate District | 12/03/2021 In plaintiff's legal malpractice action against defendants-attorney and law firm for counseling her to voluntarily dismiss her medical malpractice case for lack of evidence, summary judgment in favor of defendants was not error since voluntary dismissal under Civ.R. 41(A) does not require client concurrence similar to felony criminal change of plea colloquy requirements under Crim.R. 11(C), plaintiff failed to establish any breach in duty of legal care, and attorney's affidavit is sufficient to satisfy defendants' Civ.R. 56(C) burden.

Replevin/Business income loss. Turfco Landscaping, Inc. v. Shenigo, 2021-Ohio-4259 | 11th Appellate District | 12/06/2021 In lessee's action for, inter alia, replevin against lessor for wrongfully taking possession of vehicles and equipment that lessee stored on leased property, judgment for lessee is affirmed since lessee provided evidence of loss of contracts resulting from its inability to serve customers during time it was locked out of property, lessee's owner had personal knowledge of the business and its sales and was competent to testify, and calculation of damages was not against the manifest weight of evidence.

Interference with inheritance/ Jurisdiction. Vogel v. Campanaro, 2021-Ohio-4245 | 12th Appellate District | 12/06/2021 In brother-co-trustee's action in the general division of the common pleas court against sister-co-trustee alleging her tortious interference with expectancy of inheritance for transferring title of mother's vehicle to herself, the court lacked jurisdiction to render judgment on the claim since brother failed to exhaust appropriate remedies by bringing an R.C. 2109.50 action in the probate court to undo alleged concealment of vehicle from estate.

Nuisance/Industrial effects. Pietrangelo v. PolyOne Corp., 2021-Ohio-4239 | 9th Appellate District | 12/06/2021
In plaintiff's nuisance action against defendant-plastics company alleging that it spewed harmful vibrations and fumes into his neighborhood, the trial court did not err in granting summary judgment in favor of defendant since plaintiff failed to prove existence of industrial effects that he alleged as the basis for his claims, he did not engage an expert and instead relied on hearsay and unauthenticated documents, and defendant demonstrated that there were no genuine issues of material fact to preclude summary judgment.

Veterinary malpractice. Perelman v. Meade, 2021-Ohio-4247 | 12th Appellate District | 12/06/2021
In plaintiff-dog owner's negligence action against defendants-veterinarians for allegedly improperly performing a surgical procedure on dog prior to its adoption, which led to further surgery after it was adopted by plaintiff, summary judgment in favor of defendants was not error since the dog was personal property of animal shelter at time of original surgery and there was no duty owed to plaintiff; also, plaintiff failed to raise further arguments until she asserted them in her reply brief, so she forfeited them on appeal.

Negligence/Alternative dispute resolution. Gustinski v. Copley Health Ctr., 2021-Ohio-4282 | 9th Appellate District | 12/08/2021 In negligence action by administrator of estate of decedent-former resident of facility, denial of facility's motion to stay the case and to enforce parties' alternative dispute resolution agreement was error where the court ruled that administrator was not authorized to sign the agreement as being beyond the scope of her powers as the decedent's durable power of attorney without reaching the merits of whether administrator signed the agreement or addressing administrator's assertion that she had the authority to execute the agreement on behalf of decedent.

Medical malpractice. Walls v. Durrani, 2021-Ohio-4329 | 1st Appellate District | 12/10/2021 In plaintiff's action against defendant-surgeon alleging, inter alia, negligence for recommending surgery outside the standard of care, the trial court erred in denying defendant's motion for directed verdict since defendant recommended a different surgery from the one performed on plaintiff, defendant did not perform or assist in the actual surgery, plaintiff made informed decision to disregard defendant's advice recommending more invasive surgery, and none of defendant's actions proximately caused plaintiff's injury.

Trespass. Hammonds v. Bowman, 2021-Ohio-4369 | 11th Appellate District | 12/13/2021 In plaintiff-property owner's trespass action against defendant-neighbor alleging injury caused by discharge of a poisonous substance onto her property, the trial court erred in granting summary judgment in favor of defendant where plaintiff's husband and daughter witnessed defendant spraying herbicide directly onto their property and immediately confronted defendant, and reasonable minds could conclude that defendant intentionally caused the herbicide to enter plaintiff's property.

Trespass. Machlup v. Bowman, 2021-Ohio-4370 | 11th Appellate District | 12/13/2021 In plaintiff-property owner's trespass action against defendant-neighbor for causing damage and injury by discharging a poisonous substance

onto his property, the trial court erred in granting summary judgment in favor of defendant where plaintiff witnessed defendant spraying herbicide directly onto his property, and summary judgment was based on misstatements of fact which were not supported by the record and were contradicted by plaintiff's testimony.

Pleading. Addleman v. O'Malley, 2021-Ohio-4429 | 8th Appellate District | 12/16/2021 In an action by pro se plaintiff alleging misconduct by defendants during the time period in which her car was wrongfully repossessed and sold after plaintiff advised defendants of her bankruptcy filing and automatic stay, the trial court's dismissal of action is affirmed on reasoning that to the extent plaintiff seeks to enforce the bankruptcy court's judgment or to pursue other causes of action, the plaintiff needs to employ the proper claims and procedures in the appropriate court, and the conduct plaintiff complains of does not present cognizable tort claims under Ohio law.

Slip and fall. Canfield v. United Airlines, Inc., 2021-Ohio-4460 | 10th Appellate District | 12/16/2021 In passenger's slip and fall negligence action against airline for injuries sustained when she stepped on the metal edge of a ramp as she disembarked a plane, summary judgment in favor of airline was not error since passenger presented no evidence demonstrating that airline was grossly negligent in not preserving mobile bridge adaptor, she inspected the adaptor after sustaining injury and did not request that it be removed for further inspection, the metal edge was functionally thin but not unreasonably sharp, and negligence is not presumed just because passenger was injured.

Medical malpractice/Evidence. Gysegem v. Ohio State Univ. Wexner Med. Ctr., 2021-Ohio-4496 | 10th Appellate District | 12/21/2021 In medical malpractice action, arising from patient's continuing pain after surgery, the trial court did not err in admitting testimony of surgeon, who had performed between 100 and 200 laparoscopic appendectomies, about his usual practice in performing those surgeries since testimony was relevant, and the issue of whether surgeon's usual routine/habit actually occurred in the case is a question of weight and credibility for the trier of fact, Evid.R. 406.

Limitations/Addition of party. Maiorana v. Walt Disney Co., 2021-Ohio-4530 | 10th Appellate District | 12/23/2021 In plaintiff-photographer's negligence action against defendant-sports channel subcontractor for injuries sustained when plaintiff was struck by a camera cart during football game, it was not error to deny defendant's motion for summary judgment, which argued that the statute of limitations expired before being named a defendant, since plaintiff complied with Civ.R. 15(C) in his motion to add defendant as a proper party since the claim arose out of the same events as plaintiff's original complaint, which was filed before the R.C. 2305.10(A) statute of limitations had run, and plaintiff did not need to comply with the requirements of Civ.R. 15(D) because the case involved mistaken identity rather than unknown identity.

Slip and fall. Ianetta v. Joyce Passov Commercial Property Mgt., L.L.C., 2021-Ohio-4520 | 8th Appellate District | 12/23/2021 In plaintiff's slip and fall negligence action against defendants-grocery store and property owner for injuries sustained when plaintiff tripped and fell over parking lot speed bump, summary judgment in favor of defendants was not error since speed bump was open and obvious and plaintiff's view of it was not obstructed in any way, there was no significant distraction to divert plaintiff's attention, and even if speed bump was not installed in accordance with best practices or safety standards, it was still open and obvious and defendants had no duty to warn plaintiff of danger.

Unjust enrichment. DC Welch Trucking v. Lagowski, 2021-Ohio-4555 | 7th Appellate District | 12/27/2021 In plaintiff-trucking company's breach of contract and unjust enrichment action against defendant for failure to pay for materials supplied for construction of parking lot on defendant's property, judgment in favor of plaintiff was not error since there was some competent, credible evidence showing that defendant was unjustly enriched, even though there was no evidence of a written requirement contract.

Medical malpractice/Statute of repose. Martin v. Taylor, 2021-Ohio-4614 | 11th Appellate District | 12/30/2021 In executor's medical malpractice and wrongful death action against physician claiming delayed diagnosis and treatment of his deceased wife, the trial court did not err in denying executor additional time to obtain supplemental expert reports in opposition to renewed motions for summary judgment where executor was aware since prior ruling that statute of repose, R.C. 2305.113(C), applied to claim, due diligence would have uncovered expert opinions during time frame at issue, and grounds for relief do not fall under Civ.R. 60(B)(5), 56(F).

Medical malpractice. Adams v. Durrani, 2022-Ohio-60 | 1st Appellate District | 01/12/2022 In medical malpractice resulting in a judgment for plaintiffs, trial court's denial of defendant's motion for JNOV is affirmed since defendant did not object or file a motion in limine to challenge the trial court's statement that defendant was no longer a doctor and referred to defendant as Mr. rather than Dr., the court's statements to the jury did not communicate that defendant was the subject of multiple lawsuits, and witness' testimony that defendant lied and acted fraudulently related to claim that defendant fraudulently misrepresented the necessity of surgery, so there was no abuse of discretion in admitting the evidence, Evid.R. 403(A) and 404(B).

Slip and fall. DiCarlo v. Fairview Hosp., 2022-Ohio-75 | 8th Appellate District | 01/13/2022 In hospital visitor's slip and fall negligence action against hospital for injuries sustained when she slipped and fell on hallway floor, summary judgment in favor of hospital was not error since visitor failed to offer evidence that a hazard existed, her deposition testimony contradicted allegations in complaint that floor was wet, and she did not identify what caused her to fall.

Dental malpractice. Myers v. John A. Hudec Cleveland Dental Ctr., Inc., 2022-Ohio-80 | 8th Appellate District | 01/13/2022 In plaintiff's dental negligence action against defendants-dental clinics and personnel for injuries sustained when he fell during an X-ray exam, summary judgment in favor of defendants was not error since plaintiff failed to provide expert testimony to show that his treatment did not meet the prevailing standard of care under R.C. 2305.113(E)(6), and his affidavit of merit from a dentist did not state the applicable standard of care, how defendants deviated from the standard, or any detail about how any alleged failure caused plaintiff harm, Civ.R. 10(D)(2).

Trespass/Evidence. Holmes v. Lakefront at W. Chester, 2022-Ohio-99 | 12th Appellate District | 01/18/2022
In tenant's trespass action against landlord based on belief that landlord was allowing people to enter her apartment, trial court's dismissal of the complaint is affirmed since tenant failed to object to testimony provided by property manager and therefore waived that challenge on appeal, the manager was also tenant's witness and the manager's testimony that tenant now challenges was first elicited by tenant, and even if the challenged testimony were inadmissible under Evid.R. Ch. 602, the testimony did not change outcome of the case.

Negligence/Scope of employment. King v. Emergency Med. Transport, Inc., 2022-Ohio-123 | 5th Appellate District | 01/19/2022 In plaintiff's vicarious liability negligence action against defendant-medical transport company for loss of hearing due to defendant's employees' activation of ambulance horn in close proximity, summary judgment in favor of defendant was error where, although defendant's employees were on a personal errand at time of the incident, the question remains as to whether they were removed from the scope of their employment or if circumstances of a 24-hour shift and use of ambulance kept employees within the scope of employment due to benefit to defendant.

Wrongful death. Robinson v. Lafarge N. Am., Inc., 2022-Ohio-231 | 6th Appellate District | 01/28/2022
In plaintiff's wrongful death action against defendant-cement manufacturer for death of husband who was suffocated by cement powder while working under contract to clean defendant's railcar, summary judgment in favor of defendant was not error since decedent's actions which put him in harm's way were patently unforeseeable to defendant, the contractor believed it had the ability to safely empty cement from railcar, and the death occurred because of decedent's actions rather than because the railcar contained the cement product or because the job was wrongfully given to contractor.

Defamation/Immunity. Howard v. Condon, 2022-Ohio-255 | 11th Appellate District | 01/31/2022 In plaintiff's defamation action against defendant-judge alleging that defendant's statement at criminal trial was defamatory, the trial court did not err in granting defendant's motion to dismiss since defendant's statement was a judicial act because he was presiding over a trial and was responding to plaintiff's inquiry concerning privilege from another case, and therefore defendant had judicial immunity from civil liability, Civ.R. 12(B)(6).

Negligence/Summary judgment. Weglicki v. Rachitskiy, 2022-Ohio-254 | 11th Appellate District | 01/31/2022
In plaintiff's negligence action against defendant for injuries sustained in a group bicycling collision, summary judgment in favor of defendant was error since the court failed to consider plaintiff's evidentiary quality rebuttal evidence, including police report review and depositions, when determining whether defendant's behavior constituted reckless conduct, and even if police report was inadmissible, deposition testimony could raise a genuine issue of material fact.

Slip and fall. Wise v. E. Hall Funeral Home, Inc., 2022-Ohio-394 | 4th Appellate District | 02/01/2022
In plaintiff's slip and fall negligence action against defendant-funeral home for injuries sustained when she stepped on a small rock and fell in parking lot, summary judgment in favor of defendant was not error since the rock was a trivial defect that is commonly encountered and to be expected on parking lot surface, the rock was an open and obvious defect observed by plaintiff, and plaintiff did not testify to attendant circumstances that could have distracted her.

Discovery/Limitations. Dansberry v. Mercy Health, 2022-Ohio-360 | 1st Appellate District | 02/09/2022
In plaintiff's negligence action against defendant-rehab facility for injuries sustained during transport to her scheduled appointment, the trial court erred in denying plaintiff's motion for additional time to conduct discovery where defendant failed to disclose identity of transport driver, even under order granting motion to compel, and if driver was not defendant's employee the claim may be for ordinary negligence, with statute of limitations under R.C. 2305.10(A), rather than for medical negligence, which would be time-barred under R.C. 2305.113(A).

Negligence/Pleading/Counsel. Stevens v. Little Stars Early Learning Ctr., L.L.C., 2022-Ohio-380 | 8th Appellate District | 02/10/2022 In plaintiff-guardian's negligence action against defendants-childcare center and employees alleging abuse of, and injuries sustained by, child in their care, the trial court did not err in granting center's motion for judgment on the pleadings as to cross-claim filed by defendants' terminated employee since she did not plead any actionable claims, Civ.R. 12(C); defendants' counsel was permitted to withdraw as employee's counsel because it created a conflict of interest, employee was subsequently represented, and employee had no right to counsel in civil proceeding, Civ.R. 12(C).

Medical malpractice. Havenar v. Melaragno, 2022-Ohio-389 | 10th Appellate District | 02/10/2022 In medical malpractice action alleging that physician's failure to timely diagnose a tumor as cancer made it necessary to amputate patient's leg, summary judgment in favor of physician on reasoning that patient failed to establish proximate cause was error since the record demonstrates that the tumor had become larger between the time it was originally detected and the time it was determined to be cancerous, creating a fact issue whether physician's alleged uncontested fault proximately caused the claimed injury; one expert's affidavit of merit could not be considered because it simply met the sufficiency standards of Civ.R. 10(D)(2)(a) but did not explain how the alleged negligence foreclosed less invasive surgery.

Legal malpractice/Damages. Fabec v. Frederick & Berler, L.L.C., 2022-Ohio-376 | 8th Appellate District | 02/10/2022
In plaintiff's legal malpractice action against defendants-attorneys alleging that they filed a class action without her knowledge and failed to inform her of settlement offer, summary judgment in favor of defendants was not error since, even if defendants committed malpractice, plaintiff settled case on her own, collected more money than prior settlement offer, and sustained no loss, defendants waived collection of any fees due by declining to file a counterclaim, as required by Civ.R. 13(A), and because there were no actual damages, nominal damages are not available to prevent issuance of summary judgment.

Slip and fall. Simms v. Penn Natl. Gaming, Inc., 2022-Ohio-388 | 10th Appellate District | 02/10/2022
In casino patron's slip and fall negligence action against casino after he was injured from falling on uneven sidewalk, the trial court did not err in

Torts (continued)

granting summary judgment to casino since the elevation difference in the sidewalk where patron fell was an open and obvious danger that was not hidden, concealed from view or undiscoverable upon ordinary inspection, and there was no evidence of any attendant circumstances that enhanced the danger to patron and contributed to his fall.

Negligence/Licensee. Durfor v. W. Mansfield Conservation Club, 2022-Ohio-416 | 3rd Appellate District | 02/14/2022 In tort action by mother of child who was injured at community fair on club's property when she slipped on ladder and fell on a piece of exposed metal, requiring child to undergo surgery, the trial court did not err in granting summary judgment to club on reasoning that child was a licensee, requiring only that property owner refrain from wantonly or willfully causing injury, since child entered the premises to enjoy the activities organized by the community for her personal benefit rather than the benefit of the property owner, and the mother did not allege that the property owner engaged in any willful or wanton conduct.

Slip and fall. Boyd v. Columbiana Foods, Inc., 2022-Ohio-436 | 11th Appellate District | 02/14/2022
In store patron's slip and fall negligence action against grocery store for injuries sustained when he slipped on a piece of produce and fell, summary judgment in favor of store was not error since patron failed to provide evidence of how long the produce had been on floor and whether it was there long enough for store to have constructive notice of its presence, and the produce was an open and obvious hazard with no attendant circumstances to distract the patron.

Medical malpractice/Discovery/ Peer review. Stull v. Summa Health Sys., 2022-Ohio-457 | 9th Appellate District | 02/16/2022 In plaintiff's medical malpractice action against defendant-medical group alleging that their treatment made his injuries more severe, the trial court did not err in granting plaintiff's motion to compel production of physician's residency file since defendant failed to establish that the file was privileged as a record within the scope of a peer review committee pursuant to R.C. 2305.252; identified portions of the residency file would not be protected by peer review privilege because they were produced by physicians who were not involved with a peer review committee.

Traffic and OVI

Operation of vehicle without control. State v. Gill, 2021-Ohio-4112 | 12th Appellate District | 11/22/2021
Bench conviction of municipal operation of vehicle without control was supported by the weight of evidence where the trial court found testimony and surveillance video supported victim's claim that defendant struck his vehicle in store parking lot, but the trial court erred in finding defendant guilty of failure to control his vehicle since parking areas are not included in the ordinance since "a parking area" and a "driving aisle within a parking area" are excluded under the applicable ordinances.

Prohibition. State ex rel. Maxwell v. Brice, 2021-Ohio-4333 | Supreme Court of Ohio | 12/14/2021 In a prohibition action against village to prevent it from adjudicating an alleged civil traffic violation against relator through an administrative hearing, writ is denied as moot since village has ceased adjudicating traffic citations through its own administrative hearings, even if the traffic citation remains pending against relator.

Speeding. State v. Packer, 2021-Ohio-4636 | 7th Appellate District | 12/16/2021
Bench conviction of speeding, R.C. 4511.21(D)(3), was supported by sufficient evidence to admit the results of the laser speed-measuring device where trooper's testimony established that he was qualified and properly checked the laser's calibration at the beginning and end of his shift and that it was operating in accordance with the manufacturer's recommendations, and neither judicial notice nor expert testimony is needed concerning the laser device, Brook Park.

Speeding. State v. Pavetic, 2021-Ohio-4637 | 7th Appellate District | 12/16/2021
Bench conviction of speeding, R.C. 4511.21(D)(3), was supported by sufficient evidence to admit the results of the laser speed-measuring device where trooper's testimony established he was qualified and properly checked the laser's calibration at the beginning of each of his shifts, it was operating in accordance with the manufacturer's recommendations at both times and that no other trooper uses the laser assigned to him, and neither judicial notice nor expert testimony is needed concerning the laser device, Brook Park.

Impaired driving. State v. Miller, 2021-Ohio-4472 | 3rd Appellate District | 12/20/2021 In a conviction of OVI, R.C. 4511.191(A)(1)(a) and (A)(1)(d), denial of motion to suppress was error where the parties stipulated that defendant was chewing gum during the 20-minute observation period prior to taking the Intoxilyzer test, and thus there is no dispute that the test was not performed in substantial compliance with the department of health regulations, and the results of the test were inadmissible as a matter of law.

Impaired driving. State v. Rasheed, 2021-Ohio-4509 | 6th Appellate District | 12/22/2021 In a conviction by plea of OVI, the trial court did not err in denying motion to suppress where an identified citizen informant, based on his observations of appellant, provided those details in a 9-1-1 call, reflecting a concern for public safety, constituted sufficient indicia of reliability to justify the investigative stop, and officers detected a strong marijuana odor coming from appellant, observed her red and glassy eyes and her sluggish behavior, plus officers observed physiological indicators of marijuana impairment, and she demonstrated multiple impairments during advanced field tests designed for testing drug impairment.

Impaired driving. State v. Abner, 2021-Ohio-4549 | 12th Appellate District | 12/27/2021 In a conviction by plea of two counts of aggravated vehicular homicide and three counts of OVI, denial of motion to suppress was not error where the state met its burden of proving that defendant's blood and urine tests taken at a hospital and verified by a state laboratory substantially complied with state laws and regulations concerning the collection and handling of blood and urine specimens by hospitals and the state laboratories.

Impaired driving. State v. Blauser, 2022-Ohio-4 | 5th Appellate District | 01/03/2022 Conviction of OVI, R.C. 4511.19(A), met the sufficiency and weight of evidence standards where appellant was stopped late at night for speeding, admitted to having been at a bar, smelled of alcohol, fumbled with documents, had bloodshot eyes and admitted, after first lying about it, to consuming three beers, and refused to take field sobriety and breath tests, and the jury did not lose its way in convicting appellant.

Failure to yield. Columbus v. Gunthorp, 2022-Ohio-138 | 10th Appellate District | 01/20/2022 Bench conviction of failure to yield right-of-way when turning left met the sufficiency and weight of evidence standards where a vehicle was hit by defendant's vehicle while defendant was making a left turn at an intersection with a traffic light that had changed to yellow as the driver of the vehicle hit was entering intersection and, even if driver of vehicle hit was driving above posted limit, trier of fact was free to determine that her speeding did not arise to proceeding unlawfully so as to forfeit her right-of-way.

Administrative license suspension. State v. Hair, 2022-Ohio-229 | 6th Appellate District | 01/28/2022 In a prosecution of OVI, R.C. 4511.19, imposition of administrative license suspension was not error where evidence demonstrated that defendant's conduct constituted a refusal to submit to the test and, despite defendant vaguely alluding to a medical condition that would have prevented him from providing a breath sample, appellant presented no evidence that he did not refuse to take the test.

Impaired driving. State v. Still, 2022-Ohio-242 | 3rd Appellate District | 01/31/2022 Conviction of OVI, R.C. 4511.19(A)(1)(j)(viii)(II), met the sufficiency and weight of evidence standards since the state presented evidence that appellant submitted to a chemical-urine test, the test yielded a result demonstrating that appellant's urine on the date of the offense contained a prohibited concentration of marijuana metabolites exceeding the statutory amount, and his level of impairment is irrelevant since he was convicted of a "per se" OVI offense.

Impaired driving. State v. Snowberger, 2022-Ohio-279 | 9th Appellate District | 02/02/2022 In a conviction of OVI, R.C. 4511.19(A)(1)(a), and speeding, denial of motion to suppress was not error since officer had a reasonable, articulable suspicion of appellant's speeding violation to make a traffic stop where officer paced defendant's vehicle and defendant admitted he was traveling at 35-45 m.p.h., exceeding the posted 25 m.p.h. limit and, after stopping defendant, officer detected a strong odor of alcohol coming from defendant's vehicle, defendant's eyes were glassy and watery, and he had a slur to his speech.

Stopping after accident/Assured clear distance. State v. Allen, 2022-Ohio-406 | 2nd Appellate District | 02/11/2022 Bench conviction of failure to stop after an accident, R.C. 4549.02, and failure to keep an assured clear distance, R.C. 4511.21(A), met the sufficiency and weight of evidence standards where appellant was informed the police were on their way, but she failed to wait for their arrival, and the assured clear distance violation was supported by factors demonstrating that the victim's vehicle was discernable since appellant was stopped behind the victim's vehicle at a red light prior to hitting victim's vehicle, and the state presented a video at trial showing appellant driving away from the scene in broad daylight and in good weather and road conditions.

Workers' Compensation

Temporary total disability/Objections. State ex rel. Foster v. Indus. Comm., 2021-Ohio-4221 | 10th Appellate District | 12/02/2021 Claimant's petition for a writ of mandamus to compel commission to vacate its order terminating claimant's temporary total disability compensation is granted where the magistrate recommended granting the writ and the commission failed to file objections to the magistrate's decision, even after the court granted the commission's motion for an extension of time to file objections.

Limitations. Chatfield v. Whirlpool Corp., 2021-Ohio-4365 | 3rd Appellate District | 12/13/2021 In employee's workers' compensation appeal and complaint in trial court seeking benefits for additional conditions related to workplace shoulder injuries after employee's original claim had been allowed, the trial court did not err in granting summary judgment to employer since the statute of limitations under R.C. 4123.52 was not tolled by employee's filing of a C-86 motion for allowance of additional conditions, and the five-year limitation period was established when the last of the medical benefits was paid on original claim, making employee's instant claim untimely.

Aggravation of pre-existing condition. Fowler v. Indian River Juvenile Corr. Facility, 2021-Ohio-4422 | 5th Appellate District | 12/16/2021 In employee's action seeking to participate in workers' compensation fund for substantial aggravation of a pre-existing mental health disorder caused by physical injuries she sustained in an incident at work, summary judgment in favor of employer was error where employer did not dispute the existence of pre-injury condition, and R.C. 4123.01(C)(4) does not require objective evidence of a pre-existing reference point.

Employment status. State ex rel. Friendship Supported Living, Inc. v. Ohio Bur. of Workers' Comp., 2021-Ohio-4490 | 10th Appellate District | 12/21/2021 Home care provider company's petition for a writ of mandamus to compel bureau to vacate its order that petitioner's in-home direct care providers were employees rather than independent contractors for the period assessed is granted in part since the bureau abused its discretion where, inter alia, providers set their own schedules, usually work for short periods of time, often take extended breaks from receiving assignments, can refuse hours when they do not want to work, invoice company, and are paid only for the hours they work.

Death benefits. State ex rel. McDonald v. Indus. Comm., 2021-Ohio-4494 | 10th Appellate District | 12/21/2021 Petition for writ of mandamus to compel commission to vacate decision that petitioner was not eligible for death benefits because petitioner was not a dependent of deceased worker is granted, in part, directing commission to vacate its order and to determine whether petitioner established that she is a family member, R.C. 4123.59(D) and 4123.95, where, inter alia, petitioner was decedent's fiancée at the time of his death, they had two minor children together, they owned property with joint rights of survivorship and were jointly responsible for mortgage payments, and they each held life insurance policies naming the other as sole beneficiary.

Negligence/Immunity/Staffing agency. Wilson v. Rose Metals Industries, Inc., 2021-Ohio-4518 | 8th Appellate District | 12/23/2021 In negligence action by injured worker against company to which he was assigned by staffing agency, prompting company to argue it was entitled to workers' compensation immunity, R.C. 4123.74, the trial court did not err in granting summary judgment to company since worker was an employee of company where, inter alia, a company employee instructed worker what to do at his job, no one from the staffing agency was present at the company, the company had the right to control the manner and means of worker's performance, and although

staffing agency paid company's workers' compensation premiums, for purposes of immunity it does not matter whether customer-employer or staffing agency pays the premiums.

Aggravation of pre-existing condition. State ex rel. Knight Transp. v. Indus. Comm., 2021-Ohio-4574 | 10th Appellate District | 12/28/2021
Employer's petition for a writ of mandamus to compel industrial commission to find that substantial aggravation of pre-existing condition had abated for employee's allowed workers' compensation claim is denied since office notes and report of employee's physician reflect that symptoms never completely resolved, employee's subjective complaints were properly considered pursuant to R.C. 4123.01(C)(4), and the magistrate did not ignore employer's expert's report or weigh medical evidence but found that there was some evidence to support the commission's decision.

Loss-of-use/Standing. State ex rel. Byk v. Indus. Comm., 2022-Ohio-136 | 10th Appellate District | 01/20/2022
Petition for writ of mandamus to compel commission to vacate an order denying scheduled loss-of-use benefits to petitioner's now-deceased husband under R.C. 4123.57(B) is dismissed since husband died prior to commencing the mandamus action, his claim for workers' compensation benefits abated, he lacked standing to initiate the mandamus action, and petitioner has no right to step into husband's shoes and continue the action; petitioner's sole remedy is in her ongoing R.C. 4123.60 proceeding.

Scope of employment. Owens v. Giant Eagle, Inc., 2022-Ohio-192 | 8th Appellate District | 01/27/2022
In employee's claim for workers' compensation benefits due to an injury sustained during his work shift, the trial court erred in granting industrial commission's motion for summary judgment since the employee was not on break or otherwise away from the work premises at the time of injury, and his activity of merely walking to go speak with his manager and co-workers behind deli counter at workplace did not place employee outside of the scope of employment, even though he was not injured in the actual performance of duties, and video confirms employee's account of events, R.C. 4123.01(C).

Vision loss. State ex rel. Bowman v. Indus. Comm., 2022-Ohio-233 | Supreme Court of Ohio | 02/02/2022
Granting petition for writ of mandamus to compel industrial commission to vacate claimant's award of compensation for partial vision loss and to issue an award for 70 percent bilateral vision under R.C. 4123.57(B) is affirmed where, inter alia, the commission did not acknowledge the medical experts' consensus that strict application of the AMA Guides did not do justice to claimant's actual impairment and the guidelines themselves state that they are not necessarily applicable to all medical situations.

Permanent total disability. State ex rel. Kidd v. Indus. Comm., 2022-Ohio-450 | 10th Appellate District | 02/15/2022
Petition for writ of mandamus to compel industrial commission to vacate its order denying claim for permanent total disability is granted since the magistrate erred in applying the pertinent law to the facts where reliance on physician's finding that claimant's limitations would allow her to perform sedentary work was misplaced in light of the definition of sedentary work in Ohio Adm. Code 4121-3-34(B)(2)(a), and although workspace flexibility has advanced significantly in recent years, the definition for sedentary work has not changed.