



## Ohio caselaw summaries from November 16 – January 31

**In Case You Missed It** – The following are summaries of cases decided by Ohio courts between November 16, 2020 – January 31, 2021. To read the decisions in their entirety, please visit [ebar.ohioabar.org](http://ebar.ohioabar.org) and enter the case name in the “keyword” search field.

### Administrative Law

**Appeal.** *Handy v. Ohio Civ. Rights. Comm.*, 2020-Ohio-5415 | 9th Appellate District | 11/25/20 Dismissal of appeal of order issued by civil rights commission against appellant for alleged discriminatory housing practices under R.C. 4112.02(H) was error since identifying a party as appellee in notice of appeal is not a jurisdictional requirement and dismissal prior to expiration of one-year time limitation for service through clerk of courts was premature.

**Overpayments.** *Katsande v. Ohio Dept. of Medicaid*, 2020-Ohio-5488 | 10th Appellate District | 12/1/20 In administrative appeal of department of Medicaid's determination that appellant-service provider received overpayments during audit period, trial court did not err in adopting department's order where appellant failed to provide service records for the relevant time period, alleging that the records were destroyed in an accident, hearing examiner did not find appellant's explanation for missing documents credible, and examiner did not rely on inherently unreliable evidence, R.C. 5164.58 and 119.12.

**License to cultivate.** *Solomon Cultivation Corp. v. Ohio Dept. of Commerce*, 2021-Ohio-46 | 10th Appellate District | 1/12/21 In appeal of state department's denial of cultivator's application for license to cultivate medical marijuana, trial court did not err in affirming department's denial where cultivator knew the department's process for scoring license applications, teams assigned to score categories of the application made detailed findings as to criteria and cultivator's deficiencies in operational and security plans, and cultivator was given the opportunity to challenge department's findings, R.C. 3796.03 and 3796.09.

### Banking and Finance

**Mistaken deposit.** *Moyer v. Abbey Credit Union, Inc.*, 2020-Ohio-5410 | 9th Appellate District | 11/25/20 In executor's breach of contract and related claims action against credit union that unilaterally debited estate's accounts at credit union when it discovered that it had mistakenly transferred money to estate rather than to payable on death beneficiary, it was error to grant executor judgment on the pleadings since estate was not entitled to the money and executor did not establish that she suffered damages by relying on credit union's mistake; credit union was not justified in debiting estate's accounts, and case is remanded for executor to prove any damages.

### Business Law

**Conversion.** *Bunta v. Mast*, 2020-Ohio-5500 | 5th Appellate District | 12/2/20 In plaintiff's-LLC member's conversion action against majority owner for dissolving company and transferring assets to another business in which plaintiff had no membership interest, judgment in favor of

plaintiff was not error where, although plaintiff's claim was based on intangible assets, it was not unilaterally barred as a matter of law because the property in question was identifiable, and plaintiff presented persuasive arguments that defendant exercised dominion over plaintiff's interest in a manner inconsistent with rights of ownership.

**Business judgment rule.** *Reister v. Gardner*, 2020-Ohio-5484 | Supreme Court of Ohio | 12/3/20 In breach of fiduciary duty action by receiver of association against defendants-board members who rejected settlement offer and opposed motion to dismiss by plaintiff in underlying defamation action, resulting in significant judgment for plaintiff, court of appeals erred in affirming trial court's reasoning that the litigation privilege doctrine protected defendants, the separate and distinct business judgment rule may apply to decisions regarding the settlement of a lawsuit, the complaint here was sufficient to state actionable claims against defendants, and judgment on the pleadings for defendants was improper; the case is remanded.

**Partnership.** *Gevedon v. Decker*, 2021-Ohio-77 | 2nd Appellate District | 1/15/21 In plaintiff-business owner's fraudulent conversion claim against defendants-former partner and former partner's wife, as partners in their new business, for misappropriating assets from plaintiff's business for use in new business, it was error to grant summary judgment to defendant-wife, even though there is no evidence she knew about husband's alleged conversion, since to the extent that husband converted property of former business as a partner of new business to benefit new business, wife may be liable for conversion as partner of new business.

**Trade secrets.** *Rhododendron Holdings, L.L.C. v. Harris*, 2021-Ohio-147 | 2nd Appellate District | 1/22/21 In action by plaintiff-purchaser of assets of company that designed and manufactured joint replacement products against defendants-company's former employees, alleging violation of Uniform Trade Secrets Act, trial court erred in granting summary judgment to defendants on issue of whether company's disclosure to defendants of design files destroyed trade-secret protection since the R.C. 1333.61(B) definition of misappropriation of trade secrets includes improper use of secrets, and there is a question as to whether defendant used the files in a way that violated an alleged agreement to limit use of files.

### Construction Law

**Arbitration.** *Fayette Drywall, Inc. v. Oettinger*, 2020-Ohio-6641 | 2nd Appellate District | 12/11/20 In plaintiffs'-subcontractors' action against defendants-general contractor and developer of restaurant for unpaid amounts owed, trial court did not err in vacating stay and bypassing arbitration of dispute between defendants where developer's failure to engage in actions to comply with arbitration agreement was substantial and justified trial court's deviation from specific directive

included in remand order, and developer's failure to comply gave court a valid reason to decline to apply doctrine of judicial estoppel to foreclose general contractor from waiving arbitration.

**Contract.** *Bakhshi v. Baarlaer*, 2021-Ohio-13 | 2nd Appellate District | 1/8/21 In plaintiff-construction company's action to foreclose on a promissory note for construction of bar it contracted to remodel for defendants, trial court did not err in finding that plaintiff failed to substantially perform the work pursuant to the contract and in also finding that defendants were unjustly enriched for work plaintiff performed outside the written construction contract, but the amount of award to defendants for consequential damages from breach of contract was error since the court did not reduce its judgment to account for the period when damages did not accrue.

**Arbitration.** *Sebold v. Latina Design Build Group, L.L.C.*, 2021-Ohio-124 | 8th Appellate District | 1/21/21 In homeowners' consumer and breach of contract action against contractor for alleged failure to complete home remodeling, it was not error to grant contractor's motion to stay and compel arbitration since contract had an arbitration provision that was not procedurally unconscionable where homeowners met with contractor several times before contracting, they negotiated the contract and then renegotiated it when the bank rejected the first contract, and they could have hired an attorney to review the contract.

### Consumer Law

**Deceptive trade practices.** *Wooster Floral & Gifts, L.L.C. v. Green Thumb Floral & Garden Ctr., Inc.*, 2020-Ohio-5614 | Supreme Court of Ohio | 12/15/20 In deceptive trade practices action by plaintiff-purchaser of business, which had lost ownership of its internet domain name by letting it lapse, to prevent defendant-business that had acquired the domain name from using the domain name in advertising to re-direct customers to defendant's site, trial court's ruling in favor of defendant, affirmed by court of appeals, was not error since defendant's advertising did not create the likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services, R.C. 4165.02(A) (2).

**Agency.** *Eye v. Sal's Heating & Cooling, Inc.*, 2020-Ohio-6737 | 8th Appellate District | 12/17/20 In plaintiff's breach of warranty action against defendants who sold and manufactured his furnace which required repair work, trial court did not err in finding there was no agency relationship between furnace manufacturer and seller where seller's authorization to perform warranty repairs was insufficient to show an agency relationship, the repair technician did not testify about an express agreement to establish agency, and plaintiff's evidence failed to prove agency by estoppel.

**Consumer Sales Practices Act.** *Campbell v. Wallace*, 2020-Ohio-6819 | 7th Appellate District | 12/18/20 In action alleging that defendant violated the Consumer Sales Practices Act by selling plaintiff a defective car, trial court erred, in part, in granting summary judgment to defendant where there was a genuine issue of material fact as to whether defendant violated R.C. 1345.02(B)(2) in making representations that the car was a family vehicle and that there would be no problem driving the car to Florida; however, defendant did not violate R.C. 1345.02(B)(9) since he did not represent that he had a sponsorship, approval or affiliation that he in fact lacked.

**Arbitration.** *Norman v. Kellie Auto Sales, Inc.*, 2020-Ohio-6953 | 10th Appellate District | 12/30/20 In a vehicle purchase dispute in which arbitrator issued award to buyer on reasoning that seller violated Consumer Sales Practices Act (CSPA) and application for reconsideration was granted, resulting in ruling that seller's offer of right to cure was ineffective because it was made after arbitrator's powers expired, seller's instant application for reconsideration is denied since seller's claim that the court in first reconsideration voided the right to cure under the CSPA, finding that a supplier was obligated to exercise its right to cure prior to arbitration, is without merit where buyer did not control the decision to arbitrate to prevent cure, either party could elect arbitration to resolve a dispute, and seller informed buyer several times of its intention to elect arbitration, R.C. 1345.092 and App.R. 26(A).

**Consumer Sales Practices Act.** *Scott v. Ford*, 2021-Ohio-208 | 8th Appellate District | 1/28/21 In customer's action asserting car dealer's violation of the Consumer Sales Practices Act for manager's failure to comply with his statement that he would help customer get financing "at the best and lowest rate available," summary judgment for dealer was not error since manager did not promise to provide customer the lowest and best rate that customer could obtain on his own, rather, the manager submitted the loan application to lenders that had financing agreements with dealer, manager disclosed interest rates available to customer, and manager had no duty to disclose anything other than the interest rates.

## Contracts

**Indemnification.** *Total Quality Logistics, L.L.C. v. JK & R Express, L.L.C.*, 2020-Ohio-6816 | Supreme Court of Ohio | 12/22/20 In plaintiff-freight broker's action against defendant-carrier for contractual indemnification after plaintiff reimbursed customer as the result of loss of customer's cargo when defendant's trailer caught fire, court of appeals erred in affirming trial court's issuance of summary judgment for defendant since the trial court failed to consider whether the parties abrogated the common law requirements of Globe Indemn. Co. by the terms of their contract as it related to whether plaintiff was legally liable to respond to customer's loss.

**Indemnification.** *Wildcat Drilling, L.L.C. v. Discovery Oil & Gas, L.L.C.*, 2020-Ohio-6821 | Supreme Court of Ohio | 12/22/20 In plaintiff-drilling company's breach of contract action against defendant-gas company for withholding payment of plaintiff's invoice in response to plaintiff's refusal to indemnify defendant for a fine that defendant paid on behalf of plaintiff for its violation of state law in its drilling operation, court of appeals erred in finding that plaintiff was not required to indemnify defendant pursuant to Globe Indemn. Co. because no court analyzed

the parties' contract to determine if it shows clear intent to abrogate the common law requirements of Globe.

**Dismissal.** *Manifold & Phalor, Inc. v. Konecranes, Inc.*, 2020-Ohio-7009 | 10th Appellate District | 12/31/20 In breach of contract action by plaintiff-purchaser of cranes and related products from defendant-manufacturer, it was error to dismiss complaint for failure to state a claim, Civ.R. 12(B)(6), on reasoning that contract provisions limiting the amount of damages for a breach were enforceable since it is not discernable from trial court's decision that it examined all factual allegations in the complaint and presumed all of the allegations to be true, and such examination and presumption demonstrate that plaintiff could prove facts entitling it to recovery of direct damages.

## Criminal Law

**DNA testing.** *State v. Scott*, 2020-Ohio-5302 | 12th Appellate District | 11/16/20 Following 1992 conviction of, inter alia, murder that was affirmed, denial of 2019 petition for DNA testing of victim's fingernail scrapings to exclude appellant as a contributor was not error since the testing would not be outcome determinative in view of the evidence presented at trial by eyewitnesses and circumstantial evidence, including inculpatory statements by appellant, and the recantations by a witness decades later lacked credibility.

**Restitution.** *State v. Ciresi*, 2020-Ohio-5305 | 12th Appellate District | 11/16/20 In conviction by plea of attempted burglary, imposition of restitution is modified where victim could not give a fair market value of an heirloom coin with any certainty, and intrinsic value to the victim does not correlate with the economic harm to the victim, R.C. 2929.18(A)(1); trial court improperly relied on R.C. 2913.61(D)(1), involving a determination of value of stolen property since it applies in assessing the element of the offense and does not govern a court in assessing the value of stolen property for restitution purposes; restitution is reduced by \$400 that was awarded for the coin.

**Jury.** *State v. Harris*, 2020-Ohio-5306 | 12th Appellate District | 11/16/20 In conviction of, inter alia, involuntary manslaughter, trial court did not err in providing background about the case to the jury pool prior to the selection of jurors in order to ascertain whether any of the jurors had prior exposure to the case since court's recitation of the basic facts of the case was designed to ascertain the potential jurors' prior knowledge of the case due to pretrial publicity.

**Intervention in lieu of conviction.** *State v. Purk*, 2020-Ohio-5303 | 12th Appellate District | 11/16/20 In conviction by plea of aggravated possession of drugs and improper handling of a firearm in a vehicle, denial of motion for intervention in lieu of conviction (ILC) was not error since defendant was not eligible for ILC because she was convicted of aggravated possession of drugs, a felony of the third degree, an offense that made her ineligible for ILC, R.C. 2951.041(B)(2).

**Weapons offense.** *State v. Smith*, 2020-Ohio-5310 | 5th Appellate District | 11/16/20 Conviction of having weapons while under disability, R.C. 2923.13(A)(2)(B), met the sufficiency and weight of evidence standards where defendant had a prior conviction of felonious assault and admitted at trial to having a weapon during an argument with another person, and it was not necessary for the state to introduce the weapon at trial; jury did not lose its way in making its credibility determinations.

**Jury instruction.** *State v. Mankin*, 2020-Ohio-5317 | 10th Appellate District | 11/17/20 In conviction of trespass, R.C. 2911.21(A)(4), trial court did not err by denying defendant's request for a separate jury instruction on the necessity in the context of privilege since the requested instruction was not a correct statement of law by including human force as part of necessity rather than the correct standard of harm from a physical or natural force and, moreover, defendant did not act out of necessity by refusing to leave a hospital when requested to do so by security officers and a police officer.

**Habeas corpus.** *Payne v. LaRose*, 2020-Ohio-5460 | 7th Appellate District | 11/17/20 Petition for writ of habeas corpus is dismissed for failure to state a claim, Civ.R. 12(B)(6), since petitioner failed to file the necessary commitment papers where a review of petitioner's claim that he is falsely imprisoned requires a review of the judgment entry of sentence, and it is petitioner's statutory obligation to include those papers with his petition, R.C. 2725.04(D).

**Prosecutorial misconduct.** *State v. Hayes*, 2020-Ohio-5322 | 1st Appellate District | 11/18/20 In conviction of arson, R.C. 2909.03(A)(1), although prosecutor made a misstatement in closing argument as to how police investigator obtained certain information that was presented at trial and trial judge failed to correct it when defense counsel objected, any error was harmless since defendant did provide information to the investigator that led investigator to discovery of the same information that the prosecutor erroneously stated defendant specifically provided, and court instructed jury that the arguments of counsel were not evidence and the jurors were the sole judges of the facts.

**Identification.** *State v. Graber*, 2020-Ohio-5324 | 1st Appellate District | 11/18/20 In conviction of, inter alia, aggravated robbery, denial of motion to suppress a photo identification of defendant by the victims was not error where police used a blind administrator and showed the photo lineup to the victims separately in compliance with R.C. 2933.83(B), and victims had already independently identified defendant through Facebook with police using the lineup merely to verify the identifications.

**Batson challenge.** *State v. Saunders*, 2020-Ohio-5323 | 1st Appellate District | 11/18/20 In conviction of murder, trial court erred by permitting state to exercise a peremptory challenge to excuse a black juror after state admitted the challenge was race-based, even though the prosecutor attempted to retract the impermissible race-based reasoning, Batson.

**Sentencing.** *State v. Cochran*, 2020-Ohio-5329 | 5th Appellate District | 11/18/20 In conviction by plea of two second-degree felony drug offenses, imposition of prison sentence of four to six years was not error since the imposition of the indefinite sentence required by the Reagan Tokes Act, R.C. 2967.271, is not ripe for review because defendant is not yet subject to continued imprisonment subsequent to serving his minimum term since he has not yet served his minimum term.

**Speedy trial.** *State v. Erhardt*, 2020-Ohio-5328 | 5th Appellate District | 11/18/20 In appeal by state of grant of motion to dismiss on constitutional speedy trial grounds in prosecution of sex offenses, trial court did not err where defendant demonstrated actual prejudice, and state failed to present a justifiable reason for a four-year delay from the time a criminal complaint was filed and when the indictment was issued since the delay

resulted in his inability to obtain medical records that would have supported his claim of inability to commit the charged offenses, and state admitted that a prior prosecutor had made a "bad decision" in not prosecuting the case previously.

**Impaired driving.** *State v. Jackson, 2020-Ohio-5339* | 5th Appellate District | 11/18/20 In conviction of, inter alia, OVI, R.C. 4511.19 (A)(2), trial court did not err by not allowing defendant to cross-examine arresting trooper concerning his potential bias by questioning trooper about whether he had ever testified that he thought an OVI defendant was not under the influence and whether the trooper had ever testified on behalf of a defendant in an OVI trial since the jury had sufficient credible evidence to determine any alleged bias of trooper where the interactions between him and defendant were recorded, and the additional information sought to be introduced was purely speculative.

**Search.** *State v. Sargent, 2020-Ohio-5464* | 7th Appellate District | 11/18/20 In appeal by state of grant of motion to suppress in a prosecution of improperly handling firearms in a motor vehicle, trial court did not err in finding that officer did not have reasonable, articulable suspicion to make a traffic stop for an R.C. 4513.05(A) license plate light violation where officer stated on cross-examination that his dash cam video shows that he was more than 50 feet from defendant's vehicle when officer activated his lights.

**Felonious assault/Resisting arrest.** *State v. Holladay, 2020-Ohio-5459* | 7th Appellate District | 11/19/20 Conviction of felonious assault was not supported by sufficient evidence where there was no evidence that defendant knowingly attempted to hit officer with his car while attempting to leave an encounter between them or that the officer suffered any injury when defendant's car grazed officer, nor was there sufficient evidence of resisting arrest where there was no evidence that officer intended to arrest defendant, that defendant acted recklessly, and that officer suffered injuries.

**Plea withdrawal.** *State v. Balducci, 2020-Ohio-5334* | 8th Appellate District | 11/19/20 In conviction by plea of, inter alia, murder, denial of motion to withdraw plea made at the sentencing hearing was not error where the record does not demonstrate a substantive legal reason for withdrawal, and trial court reasonably found that the motion was based on defendant's change of heart since his plea had been validly made, basing its decision on its firsthand observations of defendant's statements and demeanor and that the record lacked any specific evidentiary support for defendant's claim of innocence.

**Post-conviction relief.** *State v. Lavette, 2020-Ohio-5338* | 8th Appellate District | 11/19/20 Following 2017 conviction of, inter alia, multiple counts of aggravated robbery that was affirmed, denial of petition for post-conviction relief without a hearing was not error where claims of actual innocence based on handwritten statements of a co-defendant claiming that he gave perjured testimony at trial is not a cognizable constitutional claim for relief pursuant to R.C. 2953.21 where there is no allegation that the state was aware of the alleged perjury, and thus there is no due process violation.

**Evidence.** *State v. Stewart, 2020-Ohio-5344* | 10th Appellate District | 11/19/20 In conviction of murder, trial court erred by permitting state to admit a video of defendant firing a handgun on a

prior occasion where the similar-looking handgun was not distinctive enough to demonstrate defendant's identity as the shooter through a pattern of conduct, Evid. R. 404(B), and also video was made two months prior to the shooting; however, error was harmless in view of evidence of defendant's DNA on the murder weapon and on a hat found nearby within 10-15 minutes of the shooting, and cell phone records showed him in the area at the time of the murder.

**Sentencing.** *State v. Sinkhorn, 2020-Ohio-5359* | 2nd Appellate District | 11/20/20 In conviction of, inter alia, aggravated robbery, imposition of consecutive indefinite prison sentences resulting in an indefinite prison term of 11 to 16 years was not error since the Reagan Tokes Act, R.C. 2967.271, does not violate the separation-of-powers doctrine because the sanction is originally imposed by a court and included in its sentence, nor do the provisions violate due process since the state department must make a particular statutory determination at a hearing, R.C. 2967.271(C) and (D), and afford an offender notice and an opportunity to be heard before more than the minimum may be required, Ferguson.

**Search.** *State v. Fleming, 2020-Ohio-5352* | 2nd Appellate District | 11/20/20 In conviction by plea of drug offenses, denial of motion to suppress was not error since officers' inventory search of a disabled vehicle following a traffic accident was permissible in order to secure property as an administrative caretaking function, and officer was authorized by tow policy to open container that was not locked and was in plain view; also, officer was not required to ask defendant whether he wanted to remove anything from the vehicle prior to the inventory since it was a search made for administrative reasons and not related to a criminal investigation, Bertine.

**Bill of information.** *State v. Barnett, 2020-Ohio-5364* | 6th Appellate District | 11/20/20 In consolidated appeal of conviction by plea of domestic violence and felonious assault, where defendant waived indictment, Crim.R. 7(A), the bill of information accompanying the plea agreement was not nullified on a procedural basis, even though it was file stamped several hours before the waiver of prosecution by indictment was file stamped since the documents had previously been presented to, explained to and consented to, by defendant, and the discrepancy did not prejudice him, R.C. 2941.03 and Hines.

**Evidence.** *State v. Sotelo, 2020-Ohio-5368* | 6th Appellate District | 11/20/20 In conviction of child pornography offenses, admission of nude images of clearly underage females contained in Facebook Messenger conversations from defendant to another person was not error where state introduced the conversations in order to establish that defendant acted with criminal intent by knowingly disseminating child pornography to another, and not to demonstrate that defendant had a propensity to disseminate child pornography, Evid.R. 404(B).

**Ineffective assistance.** *State v. Rybak, 2020-Ohio-5367* | 6th Appellate District | 11/20/20 In conviction of domestic violence and intimidation, defense counsel did not provide ineffective assistance by questioning defendant's wife on cross-examination as to whether she had ever assaulted defendant to demonstrate that defendant may have had to restrain her in order to prevent her from injuring him, even though that allowed the state to inquire about prior assaultive behavior by defendant since it was a matter of trial strategy, even if it was risky or debatable.

**Plea withdrawal.** *State v. Delaney, 2020-Ohio-7036* | 4th Appellate District | 11/20/20 In a conviction by plea of illegal assembly or possession of chemicals for the manufacture of drugs, denial of motion to withdraw plea was not error where the trial court gave full consideration to the motion, and defendant's mere change of heart when he realized at the sentencing hearing that he would be receiving a prison sentence is not a legitimate and reasonable basis for the withdrawal of the plea, Crim.R. 32.1.

**Plea withdrawal.** *State v. Miller, 2020-Ohio-5377* | 3rd Appellate District | 11/23/20 In conviction by plea of attempted aggravated trafficking in drugs, denial of oral motion to withdraw plea made at the sentencing hearing was not error where trial court considered the relevant factors in its determination, including the fact of the confidential informant's lack of cooperation with the prosecution since that fact is not a complete defense to the charge and is not by itself an indication that defendant was not guilty of the charged offense.

**Confrontation Clause.** *State v. Thomas, 2020-Ohio-5379* | 3rd Appellate District | 11/23/20 In conviction of drug offenses, trial court did not commit plain error in not finding a violation of the Confrontation Clause in admission of officers' statements of what a confidential informant told them after drug buys about defendant that were in a debriefing form, and the inquiry was initiated and emphasized by the defense on cross-examination of officer, thus "opening the door" to the state on this topic, and testimony was not outcome-determinative since duplicative of statements made otherwise in record indicating defendant was the person committing drug trafficking.

**Plea.** *State v. Milte, 2020-Ohio-5384* | 11th Appellate District | 11/23/20 In conviction by plea to drug offenses, plea was validly made where defendant was informed of the possible ramifications of her plea in which she acknowledged her understanding that the court could sentence her to up to 12 months imprisonment on each count and that it need not accept the prosecution's recommendations, and thus imposition of community control plus jail time did not render her plea invalidly made.

**Sealing.** *State v. Torres, 2020-Ohio-5390* | 11th Appellate District | 11/23/20 Following denial of application to seal record of conviction of fifth-degree felony trafficking in cocaine, trial court erred in denying second application without engaging in any analysis as to whether applicant was an eligible offender under the statute since the second application contained other attached entries granting sealing of his records in other courts, constituting a change of circumstances that had occurred since the filing of his first motion, making res judicata inapposite, R.C. 2953.31(A)(1) (a)-(b).

**Assault/Aggravated menacing.** *State v. Clemmons, 2020-Ohio-5394* | 12th Appellate District | 11/23/20 In bench conviction of assault, R.C. 2903.13(A), and aggravated menacing, R.C. 2903.21(A), although assault conviction met the sufficiency and weight of evidence standards where state presented evidence that defendant was the initial aggressor and did not act in self-defense, the aggravated menacing conviction was not supported by sufficient evidence since the state failed to show victim had a subjective belief of fear of serious physical harm where the alleged victim testified he did not feel threatened by defendant on defendant's return with a knife after a prior altercation.

**Trespass.** *State v. Hardcastle, 2020-Ohio-5396* | 12th Appellate District | 11/23/20 Conviction of trespass in violation of a municipal ordinance is not supported by sufficient evidence since defendant had a privilege to be on premises because defendant and property owner were equal partners in a business on the premises, and previous warning to defendant not to trespass was prior to time of partnership with property owner, who testified that he was irrational at time of previous occasion.

**Prosecutorial misconduct.** *State v. Combs, 2020-Ohio-5397* | 12th Appellate District | 11/23/20 In conviction of complicity to robbery, prosecutor's single objection to defendant's opening argument did not constitute prosecutorial misconduct since defendant cannot establish that the objection was improper or that it prejudicially affected his substantial rights where there was a valid basis for the objection because the prosecutor believed that defense counsel was attempting to use a police officer's statements to vouch for defendant's credibility, and prosecutor's single objection did not result in any prejudice to defendant.

**Speedy trial.** *State v. Long, 2020-Ohio-5363* | Supreme Court of Ohio | 11/24/20 Following conviction by plea of, inter alia, aggravated robbery that was reversed and remanded for trial court's failure to comply with Crim.R. 11 and subsequent conviction on remand, denial of motion to dismiss for speedy trial violation following remand that was affirmed by court of appeals was error since the pretrial incarceration of appellant for a presumptively prejudicial period, based on the time from the date the case was remanded, together with the anxiety of pending charges on remand, demonstrate that appellant was prejudiced by the delays where all four Barker factors favor the appellant; conviction is vacated.

**Indictment.** *State v. Stiles, 2020-Ohio-5419* | 1st Appellate District | 11/25/20 In 2019 murder prosecution arising out of 2005 conviction by plea to felonious assault involving a five month-old who subsequently died from injuries that coroner ruled were inflicted by defendant, grant of defendant's motion to dismiss indictment was not error since state had failed to reserve the right to pursue future charges should the victim subsequently die as a result of the injuries inflicted by defendant.

**Confrontation Clause.** *State v. Renode, 2020-Ohio-5430* | 8th Appellate District | 11/25/20 In conviction of, inter alia, murder, allowing testimony of a witness who overheard a person, who was deceased at the time of trial, exclaim at the time of a drive-by shooting that defendant was the shooter did not violate the Confrontation Clause and was admissible as an excited utterance, Evid.R. 803(2).

**Expert witness.** *State v. Walls, 2020-Ohio-5446* | 6th Appellate District | 11/25/20 In conviction of, inter alia, 24 counts of rape by force of minors under the ages of 10 and 13, trial court did not err in permitting state's expert witness testimony that was based in part on police and medical reports where witness testified that he based his opinion in major part on his direct observation of the victims, and thus his testimony was admissible under Evid.R. 703.

**Aggravated murder.** *State v. Houston, 2020-Ohio-5421* | 1st Appellate District | 11/25/20 Conviction of aggravated murder, former R.C. 2903.01(A), was supported by sufficient evidence of purpose with prior calculation and design since, even though only a short period of time

had passed between defendant's and victim's altercation and the shooting of victim, the time was sufficient to show that defendant had adopted a plan to kill victim where defendant returned to his car from club in which the altercation started and drove around the club's parking lot and an adjacent motel's parking lot before shooting victim.

**Jury.** *State v. Smith, 2020-Ohio-5445* | 6th Appellate District | 11/25/20 In conviction of aggravated robbery and felonious assault, trial court did not commit plain error by sua sponte dismissing prospective jurors for cause where four jurors responded in the negative to trial judge's question of whether they could render a guilty verdict without more than one witness, even though the court had correctly informed them prior to the question that the testimony of one witness, if believed, was sufficient to support a guilty verdict.

**Failure to comply.** *State v. Craver, 2020-Ohio-5407* | 2nd Appellate District | 11/25/20 Conviction of failure to comply with the order or signal of a police officer, R.C. 2921.331(B) and (C)(5)(a)(ii), met the sufficiency and weight of evidence standards where defendant failed to comply with officers' attempt to question him to verify whether he was driving without a license by driving away at a high speed, recklessly hitting an individual he had been talking with, hitting two other vehicles, and almost hitting another police cruiser en route to assist the other officers.

**Discovery.** *State v. Jenkins, 2020-Ohio-5409* | 2nd Appellate District | 11/25/20 In conviction of having a weapon while under disability, denial of motion to compel pursuant to Brady was not error where request for cell phone records of alleged victims of felonious assault of which defendant was acquitted were not relevant to the weapons charge.

**Engaging in a pattern of corrupt activity.** *State v. Mora, 2020-Ohio-5455* | 9th Appellate District | 11/30/20 Conviction of engaging in a pattern of corrupt activity was not supported by sufficient evidence, R.C. 2923.32, where although state demonstrated that defendant entered into an enterprise with others, the state failed to demonstrate that they engaged in a "pattern of corrupt activity" since the state only demonstrated they engaged in "isolated" incidents or incidents that were so closely related to each other and connected in time and place that they constituted a single event, R.C. 2923.31(E).

**Jury.** *State v. Stahl-Franisco, 2020-Ohio-5456* | 9th Appellate District | 11/30/20 In conviction of OVI, trial court did not commit plain error by removing a juror after the jury had returned to the courtroom with its verdict and substituting an alternate juror to resume deliberations where original juror stated that she disagreed with the other jurors' determination and only agreed because she wanted to go home, and trial judge did not know the decision of the other jurors when judge removed juror, Crim.R. 24(G)(1).

**Evidence.** *State v. Napier, 2020-Ohio-5457* | 12th Appellate District | 11/30/20 Granting motion to dismiss drug offenses on reasoning that state violated the R.C. 2925.51(E) requirement to provide defendant a sample of the alleged drug for testing was error since defendant did not establish a violation of his constitutional rights where defendant absconded eight years prior to previously scheduled trial, and he did not demonstrate that state acted in bad faith by destroying potentially useful evidence.

**Witnesses.** *State v. McDuffie, 2020-Ohio-5466* | 3rd Appellate District | 11/30/20 In conviction of cocaine possession, trial court did not commit plain error in permitting state to cross-examine defense witness concerning her credibility in making assertion that defendant was unaware of large amount of crack cocaine in their bedroom and that it was for witness' own personal use where state's questioning of witness concerning text messages between her and defendant was permissible under Evid.R. 607(A), 608 and 616, and defendant did not claim that testimony was precluded by Evid.R. 403(A).

**Post-conviction relief.** *State v. Burke, 2020-Ohio-5474* | 11th Appellate District | 11/30/20 Following 2018 conviction of, inter alia, aggravated murder that was affirmed, denial of petition for post-conviction relief without a hearing was not error since none of the affidavits or documents attached to the petition support a claim of the denial or infringement of petitioner's constitutional rights where the petition is vague, the affidavits are unreliable and problematic, and the issues raised in the affidavits are vulnerable to the application of res judicata.

**Ineffective assistance.** *State v. Patterson, 2020-Ohio-5475* | 11th Appellate District | 11/30/20 In conviction by plea to vandalism in which defendant's counsel made an oral motion to withdraw plea at sentencing hearing, but then withdrew motion after conferring with defendant when judge questioned defendant's understanding of complicity, defendant did not demonstrate ineffective assistance since she failed to show she was prejudiced where she had a proper plea colloquy and her claim of ineffective assistance depends on evidence outside the record.

**Evidence.** *State v. Howell, 2020-Ohio-5503* | 5th Appellate District | 11/30/20 In conviction of failure to yield and leaving the scene of an accident, trial court did not commit plain error by allowing officer to testify about information he obtained through LEADS that defendant's driver's license had been suspended for refusing to submit to OVI testing since the testimony was admissible under Evid. R. 404(B) to demonstrate a motive for leaving the scene, and ample circumstantial evidence was presented to demonstrate that defendant was the driver of the box truck involved in the accident.

**Felonious assault.** *State v. Dewalt, 2020-Ohio-5504* | 5th Appellate District | 11/30/20 Conviction of, inter alia, three counts of felonious assault of a police officer and weapon specifications arising out of multiple shootings by defendant from his home while police were responding to the shootings met the sufficiency and weight of evidence standards since defendant's actions demonstrated his intent where officers testified concerning the nearness of the bullets to where they were located.

**Jury.** *State v. Clark, 2020-Ohio-5588* | 7th Appellate District | 11/30/20 In conviction of gross sexual abuse of a 12 year-old female, R.C. 2907.05(A)(4), trial court did not err in denying motion for mistrial after dismissal of prospective juror for expressing an opinion during voir dire that defendant was guilty and another juror who worked with the dismissed juror as a corrections officer since appellant failed to demonstrate prejudice where the court immediately excused potentially biased juror and gave a curative instruction, and evidence of guilt was compelling and supported by text messages between defendant and victim.

**Discovery.** *State ex rel. Thomas v. McGinty, 2020-Ohio-5452* | Supreme Court of Ohio | 12/1/20 Dismissal of petition for writ of prohibition to prevent judge from enforcing his discovery order permitting defendants' counsel to inspect, measure and photograph relators' residence that was alleged crime scene, is affirmed since judge has authority to order discovery beyond specific limits of Crim.R. 16 and 17, and constitutional rights of a crime victim under Ohio Const., Art. I, Sec. 10a (Marsy's Law) must be balanced against the corresponding rights of a criminal defendant to a fair trial; relators had an adequate remedy at law by way of immediate appeal under R.C. 2505.02(B)(4).

**Habeas corpus.** *Steele v. Harris, 2020-Ohio-5480* | Supreme Court of Ohio | 12/2/20 In inmate's pro se habeas corpus action to compel prison warden to release him, claim that mandatory transfer from juvenile court to adult court was void is without merit since relator does not allege any deviations from jurisdictional requirements in his case, but instead challenges the constitutionality of the statutory bindover scheme itself, and since the court in which relator was convicted had jurisdiction to determine the constitutional question, relator has or had an adequate remedy at law by way of appeal, Smith.

**Plea.** *State v. Fleetwood, 2020-Ohio-5492* | 9th Appellate District | 12/2/20 In conviction of, inter alia, aggravated vehicular assault and OVI, plea was validly made since trial court informed defendant of each constitutional right and court was not required to stop and ask defendant whether he understood that he was waiving that specific constitutional right, rather than just informing him that he was waiving all those rights, Crim.R. 11(C) and Holt.

**Self-defense.** *State v. Pitts, 2020-Ohio-5494* | 1st Appellate District | 12/2/20 In conviction of assault, R.C. 2903.13, trial court erred by failing to apply the correct version of R.C. 2901.05(B)(1) to defendant's affirmative defense of defense of another where the alleged offense was committed before the effective date of the statute and tried after the effective date; court certifies conflict to Ohio Supreme Court.

**Plea withdrawal.** *State v. Hernandez, 2020-Ohio-5496* | 1st Appellate District | 12/2/20 Following a 1998 conviction by plea to rape with an agreed sentence of five to 25 years in prison, denial of 2019 motion to withdraw plea was not error where, although trial court failed to give the required R.C. 2943.031(B) advisement to a non-U.S. citizen and defendant made the showing required by R.C. 2943.031(D), the motion was untimely and defendant failed to demonstrate prejudice since record demonstrates he was aware of deportation consequences, Francis.

**Ineffective assistance.** *State v. Sayles, 2020-Ohio-5508* | 8th Appellate District | 12/3/20 In conviction of, inter alia, multiple counts of rape and kidnapping involving minors, claim of ineffective assistance of trial counsel is without merit where counsel was not ineffective by: not objecting to state's request to amend the indictment after it presented its case-in-chief; not objecting to testimony from the sexual assault nurse examination (SANE) nurse who examined and interviewed the victims, Evid.R. 803(4); and not objecting to the testimony of each victim's social worker since their testimony did not vouch for the truthfulness of child's statements.

**Plea.** *State v. Doss, 2020-Ohio-5510* | 8th Appellate District | 12/3/20 In conviction by plea to, inter alia, aggravated vehicular homicide, plea was validly made, even though trial court did not inform the offender of the mandatory nature of a sentence during the change-of-plea process where defendant and his counsel were aware that he faced a mandatory prison term since trial court expressly warned defendant that a possible five-year prison term was applicable to the aggravated vehicular assault count.

**Sexual battery.** *State v. Banks, 2020-Ohio-5518* | 10th Appellate District | 12/3/20 Conviction of sexual battery upon a substantially impaired person, R.C. 2907.03(A)(2) and (A)(3), met the sufficiency and weight of evidence standards where evidence is basically uncontroverted that victim was intoxicated, her testimony and a friend's testimony were sufficient to demonstrate that victim was substantially impaired by intoxication, defendant was aware of victim's intoxication by his statements to hotel housekeeper, and the sexual assault nurse examination (SANE) testimony and DNA evidence provided evidence that defendant engaged in sexual activity with the victim.

**Ineffective assistance.** *State v. Miner, 2020-Ohio-5600* | 5th Appellate District | 12/3/20 In conviction of prohibitions concerning companion animals, R.C. 959.131(B)(1), defendant received ineffective assistance of counsel by failing to object to admission of officer's body camera video in which a witness made statements contrary to those she made at trial, and jury could have used unchallenged video statements as direct evidence that defendant punched his dog, rather than a witness' subsequent trial testimony that she was merely repeating what her nephew had told her when responding to the officer.

**Plea withdrawal.** *State v. Sain, 2020-Ohio-5542* | 2nd Appellate District | 12/4/20 In conviction by plea of, inter alia, murder, denial of motion to withdraw plea was not error where defendant failed to set forth any evidence demonstrating a complete defense to the charges against him or that he was unaware of evidence that he could rely in support of that potential defense since he was aware of eyewitness statements that were contrary to his position, and trial court reasonably found that defendant merely had a change of heart.

**Miranda.** *State v. Lowery, 2020-Ohio-5549* | 6th Appellate District | 12/4/20 In conviction of two counts of aggravated murder, defendant's rights against self-incrimination were not violated where defendant spoke freely to police during interview after he acknowledged that he understood his Miranda rights, and thus knowingly and voluntarily waived those rights, notwithstanding that he mentioned the name of a person who was an attorney, but was not identified as such by the defendant and the officer was not aware that the person named was an attorney.

**Plea.** *State v. Montgomery, 2020-Ohio-5552* | 6th Appellate District | 12/4/20 In conviction by plea of second-degree felony burglary, R.C. 2911.12(A)(1) and (2), plea was validly made where trial court substantially complied with Crim. R. 11(C)(2) by informing appellant of his constitutional and non-constitutional rights prior to accepting his plea, informing him of the effect of a plea of no contest, and determined appellant understood his rights; also, challenge to Reagan Tokes Act concerning potential extensions to appellant's presumed minimum prison term are not ripe for review.

**Right to counsel.** *State v. Smallwood, 2020-Ohio-5556* | 6th Appellate District | 12/4/20 In conviction of felonious assault in which defendant represented himself with standby counsel, trial court erred by failing to ensure defendant made a valid waiver of his right to counsel where the court did not advise defendant of the nature of the charges or the statutory offenses included within them, the range of allowable punishments, possible defenses to the charges and circumstances in mitigation or other facts essential to a broad understanding of the whole matter; waiver of counsel was erroneously delegated to standby counsel, and the written waiver was insufficient.

**Post-conviction relief.** *State v. Doogs, 2020-Ohio-5547* | 6th Appellate District | 12/4/20 Subsequent to 2015 conviction and denial of petition for post-conviction relief that was filed during the direct appeal of conviction and affirmed, motion challenging trial court's subject-matter jurisdiction is actually a claim for ineffective assistance of counsel and claim that state failed to present evidence of corpus delicti are treated as an untimely, successive pro se petition for post-conviction relief and appellant failed to demonstrate that he was entitled to relief under R.C. 2953.23(A)(1)(a) and (b).

**Impaired driving.** *State v. McClellan, 2020-Ohio-5551* | 6th Appellate District | 12/4/20 In conviction by plea of OVI, trial court erred in imposing mandatory 30-month prison term where, when the court chooses to impose a prison term pursuant to R.C. 4511.19(G), the mandatory term is 60 days with a separate, non-mandatory term to be served after the mandatory term, and court exceeded its authority by identifying the additional, non-mandatory prison term as mandatory, R.C. 2953.08(G)(2).

**Plea withdrawal.** *State v. Newkirk, 2020-Ohio-5554* | 6th Appellate District | 12/4/20 In conviction by plea of, inter alia, rape for sexual assault of a child, denial of motion to withdraw plea was not error where defendant did not have a right to a pre-sentence investigation report because he was not eligible for community control, and his assertion of the inability to understand plea proceedings is contradicted by the record.

**Sealing.** *State v. Singh, 2020-Ohio-5604* | 7th Appellate District | 12/4/20 Denial of application to seal record of 12 drug offenses was not error since appellant is not an eligible offender under R.C. 2953.31(A)(1)(b) since he committed 12 separate acts over a time period of one year and five months and thus cannot be considered the same act.

**Ineffective assistance.** *State v. Vaughn, 2020-Ohio-6971* | 7th Appellate District | 12/4/20 In a conviction of, inter alia, burglary, R.C. 2911.12(A)(2), (D), claim of ineffective assistance of trial counsel is without merit since appellant failed to demonstrate defense counsel was ineffective for advising him to plead guilty to the charges contained in one case, and appellant also failed to demonstrate that defense counsel was ineffective in advising appellant to admit that his actions in one case amounted to a violation of his probation in another case.

**Plea.** *State v. Ferguson, 2020-Ohio-5578* | 11th Appellate District | 12/7/20 In conviction by plea of, inter alia, aggravated vehicular homicide and OVI, plea was validly made where the trial court complied with Crim.R. 11(C) since the advisements court sufficiently explained the consequences of

defendant's plea concerning sentencing under the Reagan Tokes Act and other sentencing statutes.

**Sentencing.** *State v. Baughn, 2020-Ohio-5566* | 12th Appellate District | 12/7/20 Although conviction of inter alia, multiple counts of rape met the sufficiency and weight of evidence standards, trial court erred in sentencing defendant to life in prison without the possibility of parole since the statute in effect during the time of the offenses, R.C. 2967.13(E), provided that a prisoner serving a sentence of imprisonment for life for rape was eligible for parole after serving a term of ten full years' imprisonment.

**Expert witness.** *State v. Milby, 2020-Ohio-5569* | 12th Appellate District | 12/7/20 Following a 2011 conviction of felonious assault and child endangering for a severe brain injury suffered by two year-old child who was under appellant's care and subsequent conviction of two counts of murder arising out of child's death in 2016, denial of funds for appellant to hire an expert to present evidence was not error since defendant sought an expert to challenge whether child's original brain injury was caused by defendant and that issue had been decided in the prior trial.

**Grand jury.** *State v. Hinkle, 2020-Ohio-5571* | 3rd Appellate District | 12/7/20 In conviction of, inter alia, aggravated vehicular assault, trial court did not err by denying defendant's request for release of transcript of grand jury testimony for use during trial where there was no showing that a particularized need for disclosure existed that outweighed the need for secrecy since the trial court and court of appeals found the requested testimony of victim was consistent with her trial testimony, Greer.

**Menacing.** *State v. Kibble, 2020-Ohio-5560* | 9th Appellate District | 12/7/20 Conviction of menacing, R.C. 2903.22(A), met the sufficiency and weight of evidence standards where testimony showed the victim believed that defendant would cause her physical harm and, although defendant had angered victim by previously telling victim's employer that she was selling drugs, details of victim's testimony with respect to events in question were confirmed by her co-worker.

**Jury instruction.** *State v. Osborne, 2020-Ohio-5563* | 12th Appellate District | 12/7/20 In conviction of aggravated robbery for threatening victim with a knife during a theft, trial court did not err in denying defendant's request for jury instruction on lesser-included offense where evidence regarding defendant's use of a knife was uncontroverted, and a jury could not reasonably believe victim's testimony regarding robbery yet find defendant did not have a knife.

**Jury instruction.** *State v. Reeves, 2020-Ohio-5565* | 12th Appellate District | 12/7/20 In conviction of theft, R.C. 2913.02(A)(1), for taking victim's bedding from a dryer in laundromat, trial court did not err in not instructing jury on affirmative defense of abandonment where defendant did not request jury instruction on abandonment, evidence shows victim used a dryer sheet and paid to dry the items, which is inconsistent with an intent to abandon them, and defendant's statements to police do not support that she reasonably believed bedding had been abandoned.

**Search.** *State v. Wagner, 2020-Ohio-5574* | 3rd Appellate District | 12/7/20 In conviction by plea of possessing drug abuse instruments, R.C. 2925.12(A), denial of motion to suppress was

not error where driver of non-owned vehicle gave consent to search vehicle during a traffic stop, notwithstanding that defendant-owner was passenger in vehicle and officer was aware of that fact.

**Search.** *State v. Scott, 2020-Ohio-5575* | 3rd Appellate District | 12/7/20 In conviction of illegal manufacture of drugs or cultivation of marijuana, R.C. 2925.04(A) and (C)(5)(d), denial of motion to suppress was not error where competent, credible evidence supported court's finding that officer did not knowingly and intentionally, or with reckless disregard for the truth, include false statements in search-warrant affidavits, affidavits were not too stale and contained information sufficient to support issuing judges' probable-cause determinations and, moreover, good faith exception applies.

**Evidence.** *State v. Sanchez, 2020-Ohio-5576* | 11th Appellate District | 12/7/20 In conviction of, inter alia, rape of a six year-old female, trial court did not err by admitting testimony of a trained and experienced officer to opine hands he saw in photos found in defendant's cell phone that showed sexual contact had the same characteristics or appearance as defendant's hands he personally observed and documented by photographing, Evid.R. 701, and although officer conceded on cross-examination that he was not an expert in making hand identifications, this issue relates to the weight of his lay opinion.

**Sex offender classification.** *State v. Wright, 2020-Ohio-5577* | 11th Appellate District | 12/7/20 Following 2013 conviction by plea of complicity to rape that occurred in 2007, classification of appellant as a sexual predator under Megan's Law was not against the weight of the evidence where, though some of the factors may weigh in his favor, the trial court identified many of the points that appellant relies on and, after weighing the factors, court reasonably concluded appellant possessed a likely risk to recidivate.

**Jail-time credit.** *State v. Walker, 2020-Ohio-5598* | 5th Appellate District | 12/7/20 Following 2008 conviction of three counts of complicity to forgery and imposition of concurrent prison sentences of 10 months and an additional consecutive prison sentence of one year for the violation of a prior post-release control (PRC) in another case pursuant to R.C. 2929.141, denial of 2020 pro se motion to correct jail-time credit, claiming credit for 365 days served in prior case, was not error because it arose out of a prior offense and, since 56 days of the three year PRC sanction remained, the court was authorized to impose the entire one-year sentence, R.C. 2929.141.

**Post-conviction relief.** *State v. Montgomery, 2020-Ohio-5594* | 10th Appellate District | 12/8/20 Following a conviction by plea of capital aggravated murder that was affirmed by the Ohio Supreme Court, and trial court's subsequent grant in part of a petition for post-conviction relief, court of appeals affirms grant of petitioner's claim of ineffective assistance during the mitigation/sentencing phase; remanded for action consistent with this decision, but the court of appeals affirms denial of petitioner's post-conviction claim of ineffective assistance of counsel during the plea/trial phase in advising him to plead guilty.

**New trial.** *State v. Hillman, 2020-Ohio-5597* | 10th Appellate District | 12/8/20 Following 2014 conviction of, inter alia, burglary that was affirmed, denial of 2020 motion for leave to file a delayed Crim.R. 33 motion for a new trial was not error

where claim that the trial court was required to file findings of fact and conclusions of law is without merit, nor was a hearing on the motion required since neither the motion nor its supporting affidavits provide prima facie evidence of an unavoidable delay where affidavits show he was aware of the existence of the ground supporting his motion at the latest in 2017.

**Impaired driving.** *State v. Curfman, 2020-Ohio-5632* | 5th Appellate District | 12/8/20 In conviction by plea of, inter alia, OVI, R.C. 4511.19(A)(1)(a) and (d), denial of motion to suppress was not error since officer had reasonable suspicion to stop defendant for littering and to request defendant perform field sobriety testing after observing defendant's red, bloodshot eyes and his pupils reacted slowly, and defendant told officer he had consumed two alcoholic beverages.

**Evidence.** *Lathan v. Lathan, 2020-Ohio-5602* | 9th Appellate District | 12/9/20 In father's defamation action against daughter for asserting that he had sexually abused her and others, trial court did not err in admitting testimony by physician's regarding her assessment of the truthfulness of daughter's claims where father failed to show that physician's testimony affected his substantial rights or prejudiced the jury and, although father objected to other witness' testimony as constituting similar acts evidence, the testimony was offered because witness had shared information concerning abuse with daughter who then included it in public statements that were the subject of defamation claims.

**Sex offender specification.** *State v. Searles, 2020-Ohio-5608* | 1st Appellate District | 12/9/20 In convictions in two combined cases of public indecency and voyeurism in each case, trial court erred by imposing Tier 1 sex offender specifications for the public indecency convictions since those convictions did not involve minor victims and those convictions are vacated.

**Plea.** *State v. Griffin, 2020-Ohio-6830* | 7th Appellate District | 12/9/20 In a conviction by plea of attempted rape, plea was validly made since the trial court's statements that appellant would be required to register as a Tier III sex offender and give notice of residency changes did not constitute a complete failure of the trial court to comply with the maximum penalty provision in Crim. R. 11(C)(2)(a), nor did appellant demonstrate that he would have rejected the plea and proceeded to trial on the original charges if the court had specified the lifetime duration of his obligation, Dangler.

**Aggravated murder.** *State v. Grate, 2020-Ohio-5584* | Supreme Court of Ohio | 12/10/20 Conviction of, inter alia, two capital aggravated murder offenses is affirmed and issues discussed include claims of ineffective assistance of counsel for: not requesting change of venue, filing a joint motion with state for a gag order, withdrawal of insanity plea, not raising merger of offenses, advising change of plea, not objecting to other-acts evidence and ineffective mitigation-phase preparation and closing argument; independent sentence evaluation finds the aggravating circumstances that appellant was convicted of outweigh mitigating factors pursuant to R.C. 2929.05(A).

**Sexually-violent predator specification.** *State v. Townsend, 2020-Ohio-5586* | Supreme Court of Ohio | 12/10/20 In conviction of, inter alia, multiple counts of rape and sexually-violent predator specifications, court of appeals did not err in

holding that the convictions on the sexually-violent predator specifications that attached to the crimes that appellee committed before April 29, 2005 violated the U.S. Constitution ex post facto clause, R.C. 2971.01(H)(1).

**Evidence.** *Chagrin Falls v. Ptak, 2020-Ohio-5623* | 8th Appellate District | 12/10/20 In conviction of menacing by stalking, R.C. 2903.211(A)(1), admission of defendant's cell phone records was not error where officer testified that he obtained the records of defendant's cell phone through a court-ordered subpoena to defendant's phone company, and that the records were accompanied by a certification of authenticity from a phone company custodian and the certification was admitted into evidence.

**Sex offense.** *State v. Smith, 2020-Ohio-6694* | 4th Appellate District | 12/10/20 Conviction by plea of rape of a child under the age of 13, R.C. 2907.02(A)(1)(b), was supported by sufficient evidence where the facts that formed the basis of defendant's plea sufficiently alleged the subsection of rape under which defendant was charged, and a video shows defendant engaged in the sexual conduct with the child as charged where the child is complying with defendant's directions.

**Ineffective assistance.** *State v. Crossley, 2020-Ohio-6639* | 2nd Appellate District | 12/11/20 In conviction by plea of, inter alia, carrying a concealed weapon after a loaded, stolen firearm was found in defendant's truck, judgment is reversed for ineffective assistance of counsel where counsel failed to argue for merger of offenses at sentencing, the offenses were not dissimilar in import or significance, both offenses stemmed from the same action and were not committed with separate animus, and therefore were allied offenses that should have been merged.

**Ineffective assistance.** *State v. Crossley, 2020-Ohio-6640* | 2nd Appellate District | 12/11/20 Following a conviction by plea of, inter alia, weapon offenses that was affirmed, denial of petition for post-conviction relief was error where appellant's affidavit avers substitute trial counsel at plea hearing provided ineffective assistance by informing him that he would immediately proceed to trial if he did not enter a plea at hearing, thereby precluding a hearing on a motion to suppress previously filed, and court failed to evaluate appellant's affidavit on this issue; remanded for hearing on credibility of affidavits.

**Search.** *State v. Letts, 2020-Ohio-6643* | 2nd Appellate District | 12/11/20 In conviction by plea of possession of fentanyl-related compound, denial of motion to suppress was not error where officers smelled burnt marijuana, giving them reasonable, articulable suspicion to justify a Terry stop, detention was properly extended when routine stop became felony drug investigation, consent to search vehicle and defendant's person was voluntary and, although defendant's custodial status was not voluntary, there was no evidence of coercive police procedures.

**Court costs.** *State v. West, 2020-Ohio-6647* | 2nd Appellate District | 12/11/20 In conviction of, inter alia, felonious assault, trial court did not err in denying defendant's motion to waive court costs where the court noted defendant's claim of indigence and considered his ability to pay court costs, and he was allowed, but not ordered or

compelled, to perform community service to be credited toward payment of costs, R.C. 2947.23(C). **Search.** *State v. Holt, 2020-Ohio-6649* | 6th Appellate District | 12/11/20 In conviction by plea of, inter alia, drug trafficking, denial of motion to suppress without a hearing was not error since no hearing was required where search warrant was based only on information provided by affidavit, including officer's observations of events at defendant's home, defendant failed to make a substantial preliminary showing of a knowing, intentional or reckless falsity, and defendant did not allege officer knowingly or recklessly made false statements in the search warrant affidavit.

**Ineffective assistance.** *State v. Holt, 2020-Ohio-6650* | 6th Appellate District | 12/11/20 In conviction by plea of attempted felonious assault and vandalism, defense counsel did not provide ineffective assistance by not moving for the waiver of court costs of prosecution since defendants have flexibility under R.C. 2947.23(C) when to request a waiver, and counsel's decision not to request a waiver at sentencing and instead to postpone it until later is a matter of trial strategy, nor did defendant demonstrate prejudice.

**Weapon offense.** *State v. Brooks, 2020-Ohio-6648* | 6th Appellate District | 12/11/20 Conviction of having a weapon under a disability, R.C. 2923.13(A)(2) and (B), met sufficiency and weight of evidence standards since defendant "had" a gun, even though he was in jail, where in recorded conversations of defendant and his girlfriend, defendant informed her where his gun could be found in his book bag in her house, constituting constructive possession of the gun and the phone conversations reveal that his girlfriend was using his gun with his permission and maintaining it for him while he was in jail.

**Weapon offense.** *State v. Johns, 2020-Ohio-6652* | 6th Appellate District | 12/11/20 Conviction of complicity to having a weapon under a disability, R.C. 2923.13(A)(2) and (B), was not supported by the sufficiency and weight of evidence standards where defendant's boyfriend in jail-phone conversations with defendant-girlfriend told her where she could find his gun in a book bag in her house, but there was no evidence presented that defendant aided and abetted her boyfriend in the weapons offense where there was no showing she had knowledge her boyfriend was under a weapons disability.

**Disorderly conduct.** *State v. Hinckley, 2020-Ohio-6689* | 5th Appellate District | 12/11/20 Bench conviction of disorderly conduct, R.C. 2917.11(A)(4), met the sufficiency and weight of evidence standards where defendant blocked a shared driveway by moving snow in front of other party's part of a shared driveway that hindered and prevented the other party from exercising his right to use his property where the snow on the shared driveway was not interfering with defendant's access to his property.

**Reopening.** *State v. Fuller, 2020-Ohio-6735* | 8th Appellate District | 12/11/20 Pro se application for re-opening appeal, App.R. 26(B), is denied where the applicant failed to demonstrate ineffective assistance of appellate counsel for not raising issues related to: double jeopardy based on a prior plea in a municipal court case; allied offenses; ineffective assistance of trial counsel in not requesting jail-time credit for offenses merged prior to sentencing, and trial court's not calculating jail-time credit since no credit was due.

**Prohibition.** *State ex rel. Cornely v. McCall, 2020-Ohio-6747* | 8th Appellate District | 12/11/20 Action for writ of prohibition to prevent trial judge in underlying criminal action to enforce a no contact order that is part of community control imposed by trial court is dismissed, sua sponte, where relator provides no authority that respondent has exercised or is about to exercise judicial authority that is unauthorized by law, and no dispute exists that respondent has jurisdiction to impose community control, and Ohio courts have recognized that a no-contact order is a community control sanction.

**Ineffective assistance.** *State v. Kapitulka, 2020-Ohio-6664* | 12th Appellate District | 12/14/20 In conviction of, inter alia, OVI, claim of ineffective assistance of counsel is without merit since none of the testimony cited by appellant was improperly admitted, including claim of "opinion" testimony that defendant was "intoxicated" or "noticeably impaired" since a witness needs no special qualifications to testify as to whether a person appears intoxicated, and none of the testimony was based on speculation since witnesses testified of their personal knowledge of the incident and the information that formed the basis of their statements.

**Self-defense.** *State v. Sturgill, 2020-Ohio-6665* | 12th Appellate District | 12/14/20 In bench conviction of felonious assault, trial court did not err in finding that defendant failed to satisfy the elements for self-defense where he did not submit evidence that "tends to support that the accused person used force in self-defense" that would result in the shifting of the burden of persuasion to the state under revised R.C. 2901.05(B)(1) since defendant was at fault since evidence was undisputed that he initiated the physical altercation and did not use reasonable force by stabbing victims with a knife.

**Search.** *State v. Jones, 2020-Ohio-6667* | 3rd Appellate District | 12/14/20 In conviction of drug offenses, denial of motion to suppress was not error where the totality of the search warrant affidavit provided the issuing authority a substantial basis to conclude there was a fair probability that probable cause existed that drugs would be found in defendant's residence, including return of defendant to her residence after a drug transaction, the affidavit also established that defendant was living at the residence and a trash pull supported possible drug-related activity and mail was addressed to defendant.

**Plea.** *State v. Conard, 2020-Ohio-6673* | 11th Appellate District | 12/14/20 In conviction by plea of four counts of aggravated vehicular homicide and OVI, plea was validly made where trial court complied with Crim.R. 11(C)(2)(c), and defendant incurred no prejudice by the court's failure to inform him that his not guilty plea could not be used against him in any civil or other criminal proceeding, and record demonstrates the court informed him at his plea colloquy that post-release control was mandatory and that the written plea informed him of that fact.

**Forgery.** *State v. Bunkley, 2020-Ohio-6675* | 11th Appellate District | 12/14/20 Convictions of forgery, R.C. 2913.31(A)(2), and passing bad checks, R.C. 2913.11(B), met the sufficiency and weight of evidence standards where admissible evidence established defendant's identity as the offender and copy of check was properly admitted into evidence to prove that check was "spurious" under

R.C. 2913.31(A)(2) and "dishonored" under R.C. 2913.11(B), and jury did not lose its way in making its credibility determinations; also discussed: identity, authentication and hearsay.

**Post-conviction relief.** *State v. Glover, 2020-Ohio-6683* | 11th Appellate District | 12/14/20

Following a 2017 conviction by plea of cocaine possession, denial of intervention in lieu of conviction and imposition of community control for four years, denial of 2019 motion to modify sentence to grant intervention was not error where, treated as a petition for post-conviction relief, it was untimely filed and does not meet the requirements for the exception for filing an untimely petition in R.C. 2953.23, and claim that a judgment is voidable must be raised on direct appeal.

**Aggravated burglary.** *State v. Juarez, 2020-Ohio-6692* | 5th Appellate District | 12/14/20

Conviction of aggravated burglary, R.C. 2911.11(A) (1), met the sufficiency and weight of evidence standards where, although there was conflicting evidence of the events resulting in defendant's arrest, the testimony of state's witnesses was sufficient to demonstrate that defendant entered another's home without permission and attacked a person who was present, and credibility issues were for trier of fact.

**Appeal.** *State v. Ellis-Byrom, 2020-Ohio-6693* | 5th Appellate District | 12/14/20

In conviction by plea of weapon offenses, appeal is dismissed where the notice of appeal was signed by a person who is not a licensed attorney and therefore that person may not represent the appellant in this matter, R.C. 4705.01 and Miller.

**Self-incrimination.** *State v. Gideon, 2020-Ohio-5635* | Supreme Court of Ohio | 12/15/20

In prosecution of physician for sexual imposition, state may use incriminating answers by a physician during a medical-board investigation in a criminal prosecution against physician where, even though threatened loss of a medical license is a form of coercion that can compromise the privilege against self-incrimination, credible evidence supported trial court's factual finding that defendant did not objectively believe that a refusal to answer truthfully questions posed by the medical-board investigator could lead to the loss of his medical license.

**Search.** *State v. Wheeler, 2020-Ohio-6720* | 5th Appellate District | 12/15/20 In conviction by plea to drug offenses, denial of motion to suppress was not error where during traffic stop, officer observed a large knife on defendant's belt loop as he exited the vehicle after officer learned that he did not have a valid license, and officer had a reasonable, objective basis to conduct a pat down for other weapons on observing the knife, a pouch defendant had on his belt could have contained a weapon, and other drugs found on defendant would have been inevitably discovered after he was arrested.

**Sentencing.** *State v. Hitchcock, 2020-Ohio-6751* | 5th Appellate District | 12/15/20

In conviction of sex offenses involving a minor and reversal by the Ohio Supreme Court of imposition of community control following completion of a prison term, imposition on re-sentencing of a 13-year prison sentence from the prior 10-year prison sentence raises a presumption of vindictiveness that is not rebutted in the record since trial court gave no specific reasons for the increase in sentence imposed, Pearce.

**Sentencing.** *State v. Ramey, 2020-Ohio-6733* | 4th Appellate District | 12/15/20

In conviction by plea of, inter alia, felonious assault with appellant sentenced to an indefinite prison term of a minimum of nine years and a maximum of 12 years under the Reagan-Tokes Law, due process challenge is not ripe for review and appeal is dismissed since, under the Reagan-Tokes Law, there is a rebuttable presumption that appellant will be released at the end of his minimum sentence but, since he has not yet served his minimum sentence, the constitutional issue is not ripe for review.

**Pattern of corrupt activity.** *State v. Dent, 2020-Ohio-6670* | Supreme Court of Ohio | 12/16/20

In conviction of, inter alia, engaging in a pattern of corrupt activity, R.C. 2923.32, evidence was sufficient to show defendant engaged in a "pattern" of corrupt activity where the evidence presented, viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt, even if the predicate offenses occurred on the same day at the same location where the evidence shows that the corrupt activity is neither isolated nor so closely connected to be considered a single offense.

**Pattern of corrupt activity.** *State v. Groce, 2020-Ohio-6671* | Supreme Court of Ohio | 12/16/20

In conviction of, inter alia, engaging in a pattern of corrupt activity, R.C. 2923.32, evidence was sufficient to show defendant engaged in a "pattern" of corrupt activity where the evidence presented, viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt, even if the predicate offenses occurred on the same day at the same location, where the evidence shows that the corrupt activity is neither isolated nor so closely connected to be considered a single offense.

**Impaired driving.** *State v. Garland, 2020-Ohio-6712* | 1st Appellate District | 12/16/20

Following conviction by plea of OVI and suspension of license for three years that was modified to permit appellant to drive with an ignition interlock device that appellant subsequently violated, R.C. 4510.46, revocation of appellant driver's license for seven years from the date of the offense was error since the original suspension was three years, and the court was not authorized to impose a suspension greater than six years for the interlock device violation, R.C. 4510.46(C)(3).

**Reopening.** *State v. Knight, 2020-Ohio-6709* | 9th Appellate District | 12/16/20

Application to re-open appeal, App.R. 26(B), is denied where claim that the amended self-defense statute, R.C. 2901.05(B), applies is without merit since the statute is not retroactive and was not enacted until after appellant was convicted, and jury reasonably could have rejected appellant's claim of self-defense on the basis that he lacked a bona fide belief that he or others were in imminent danger of death or great bodily harm and that his only means of escape was the use of force.

**New trial.** *State v. Smith, 2020-Ohio-6718* | 1st Appellate District | 12/16/20

Following a 2009 conviction of murder, R.C. 2903.02(A), denial of 2019 "Motion for Leave to File Motion for New Trial pursuant to Crim.R. 33(A)(1), (2) and (5)" without a hearing was not error since appellant presented no evidence that he had been unavoidably prevented from timely moving for a new trial on the proposed ground that a witness who testified at trial recanted her testimony where defense

counsel had explored at trial the dim lighting conditions and alleged coercion by the police or the prosecuting attorney.

**Impaired driving.** *State v. Carte, 2020-Ohio-6752* | 5th Appellate District | 12/16/20

In conviction of OVI, R.C. 4511.19(A)(1)(a), admission of officer's body camera videos showing defendant to be intoxicated was not error since defendant did not stipulate to intoxication and refused to take a breath test and, although officers testified that defendant was intoxicated, the best evidence by which jury could decide whether defendant was intoxicated was by watching the corroborative videos.

**Search.** *State v. Desarro, 2020-Ohio-6815* | 7th Appellate District | 12/16/20

In a conviction by plea of obstructing official business and marijuana possession, denial of motion to suppress was error since defendant had an actual, subjective and reasonable expectation of privacy to the area adjacent to the home where he took actual steps to protect the area from observation by passersby, and officer had no reason to be so close to the house without a warrant and, in doing so, officer invaded defendant's reasonable expectation of privacy.

**Post-conviction relief.** *State v. Anderson, 2020-Ohio-6912* | 7th Appellate District | 12/16/20

In a conviction by plea of drug trafficking, trial court did not err in denying petition for post-conviction relief where defendant breached terms of plea agreement by appearing late for sentencing and testing positive for drugs and, although the imposed sentence is longer than the agreed sentence, it is well within the maximum sentence that the court could have imposed, R.C. 2953.21.

**Self-representation.** *State v. Hackett, 2020-Ohio-6699* | Supreme Court of Ohio | 12/17/20

In conviction of, inter alia, murder, defendant was not denied his U.S. Const. Sixth Amendment right to counsel where, after a hearing, he chose to represent himself and waived his right to counsel, and trial court permitted previously assigned counsel to assist defendant as standby counsel, but denied defendant's request to have standby counsel to be engaged in functions that would amount to representation of defendant during the trial since there is no Sixth Amendment right to "hybrid assistance" involving standby counsel.

**Aggravated murder.** *State v. Graham, 2020-Ohio-6700* | Supreme Court of Ohio | 12/17/20

In conviction of, inter alia, capital aggravated murder, death sentence is vacated where aggravating circumstances did not outweigh the cumulative effect of the mitigating evidence beyond a reasonable doubt and cause is remanded for re-sentencing; other issues discussed include: ineffective assistance of counsel; tainted jury pool as to race; other acts evidence; prosecutor misconduct; admission of victim impact testimony during guilt phase; constitutionality of death sentence for a defendant who was under age 21 at time of crime; constitutionality of death penalty.

**Sentencing.** *State v. Rue, 2020-Ohio-6706* | Supreme Court of Ohio | 12/17/20

In 2012 conviction of burglary and imposition of five years of community control under R.C. 2929.15(A) (1), subsequent violation and 2018 revocation of community control, trial court's imposition of a two-year prison term was error since the court lacked authority to conduct those proceedings because the notice of the violations and commencement of the revocation proceedings did not occur before the expiration of the community control term.



**Batson challenge.** *State v. Lee, 2020-Ohio-6738* | 8th Appellate District | 12/17/20 In a conviction of, inter alia, murder, R.C. 2903.02(B), trial court's grant of state's two peremptory challenges of African-American prospective jurors and denial of Batson challenges as to those jurors was not error where there was no evidence of discriminatory intent in the state's explanation of its peremptory challenges, the reasons offered were race-neutral explanations that were accepted by the trial court, and any error was harmless.

**Court costs.** *State v. Duncan, 2020-Ohio-6740* | 8th Appellate District | 12/17/20 In a conviction by plea of, inter alia, sexual battery, trial court erred by imposing court costs in its judgment entry where the court waived court costs at the sentencing hearing.

**Post-conviction relief.** *State v. Stewart, 2020-Ohio-6743* | 8th Appellate District | 12/17/20 Following a 1997 conviction of aggravated murder and sentence of "30 years to life," denial of motion to vacate sentence was not error since sentences based on an error, including sentences in which a trial court fails to impose a statutorily mandated term, are not void, but voidable if the court imposing the sentence has jurisdiction over the case and the defendant, and since the sentencing error rendered the sentence only voidable, the error cannot be corrected through a post-conviction proceeding, Henderson.

**Impaired driving.** *State v. Williams, 2020-Ohio-6755* | 5th Appellate District | 12/17/20 In conviction by plea of, inter alia, OVI and improper lane change, denial of motion to suppress was error where officer lacked a reasonable and articulable suspicion for the traffic stop since defendant's conduct in crossing a single, solid white line from the left-turn-only lane into the adjacent straight lane of travel was not illegal, and officer's mistaken interpretation of the ordinance as an absolute prohibition against crossing a solid white line was unreasonable; reversed and remanded for further proceedings.

**Search.** *State v. Walter, 2020-Ohio-6772* | 5th Appellate District | 12/17/20 In a conviction by plea of a weapons offense, denial of motion to suppress was not error where, while there were no exigent circumstances to permit the warrantless search of the premises after officers responded to a 9-1-1 call after a hang-up by the caller and then being told in a follow-up call that no emergency existed and officers' inspection of the outside of the house indicated that there did not appear to be exigent circumstances within the house, defendant gave officers consent to conduct a search of the premises.

**Search.** *State v. Sheets, 2020-Ohio-6801* | 5th Appellate District | 12/17/20 In a conviction by plea of drug trafficking, denial of motion to suppress was not error where officer had a reasonable suspicion of a license plate violation, R.C. 4503.21(A), where license plate was observed by officer to be unhinged in one corner and had the "potential to swing" since it was not lodged in place.

**Reopening.** *State v. Simpson, 2020-Ohio-6719* | Supreme Court of Ohio | 12/18/20 In an App.R. 26(B) application for re-opening an appeal, the standard articulated in *Strickland v. Washington* applies in the determination of claims of ineffective assistance of appellate counsel, and the court of appeals correctly applied this standard.

**Sentencing.** *State v. Jones, 2020-Ohio-6729* | Supreme Court of Ohio | 12/18/20 In conviction of multiple counts merged into an involuntary manslaughter count, court of appeals erred in reversing trial court's sentence since R.C. 2953.08(G)(2) does not authorize a court of appeals to review a trial court's findings made pursuant to R.C. 2929.11 and R.C. 2929.12 and to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.

**Sentencing.** *State v. Chapman, 2020-Ohio-6730* | Supreme Court of Ohio | 12/18/20 In conviction of failure to pay child support to the mothers of his 11 children and sentence to community control with condition that appellant "make all reasonable efforts to avoid impregnating a woman" during his sentence, court of appeals erred by affirming since the condition is not reasonably related to the goals of community control because appellant's criminal conduct was for failure to pay as his means and ability allow, not for the number of children for whom he failed to provide.

**Breaking and entering.** *State v. Fazenbaker, 2020-Ohio-6731* | Supreme Court of Ohio | 12/18/20 Conviction of breaking and entering, R.C. 2911.13(A), was supported by sufficient evidence where travel trailer broken into was an unoccupied structure since, at the time of the incident, the trailer had been fully covered, winterized and placed in a storage area, and thus the trailer qualified as an unoccupied structure for the purposes of R.C. 2911.13(A).

**Court costs.** *State v. Sibrian, 2020-Ohio-6769* | 2nd Appellate District | 12/18/20 On remand from Ohio Supreme Court, court of appeals reverses trial court's denial of pro se motion to vacate court costs where trial court was required to, but did not, provide some explanation for its decision in order for court of appeals to conduct a meaningful review of its decision, Taylor; remanded for reconsideration of motion.

**Venue.** *State v. Moore, 2020-Ohio-6781* | 6th Appellate District | 12/18/20 In a conviction of, inter alia, attempted aggravated murder and retaliation, state failed to establish venue where all of the events that gave rise to the charges contained in the indictment occurred in Marion County, where appellant was incarcerated, and state did not establish that venue is proper in Erie County under R.C. 2901.12(A), (D), or (H), all requiring at least one of the elements of one of the offenses to have occurred in the county in which the action is brought.

**Right to counsel.** *State v. Wright, 2020-Ohio-6783* | 6th Appellate District | 12/18/20 In a conviction of, inter alia, aggravated menacing, trial court erred by requiring defendant to proceed to trial pro se without obtaining an express or implied waiver of her right to counsel, thereby violating her Sixth Amendment right to counsel.

**Right to counsel.** *State v. Jones, 2020-Ohio-6777* | 6th Appellate District | 12/18/20 On remand to court of appeals from the Ohio Supreme Court on issue of waiver of counsel in conviction of drug and related offenses, trial court failed to ensure that defendant's waiver of the right to counsel was knowing, intelligent and voluntary where trial court failed to make any of the required advisements to defendant before accepting his waiver, and the written waiver of counsel was similarly deficient.

**Plea.** *State v. Krueger, 2020-Ohio-6779* | 6th Appellate District | 12/18/20 In a conviction by plea of corrupting another with drugs, plea was validly made where trial court substantially complied with Crim.R. 11(C)(2)(a) by informing defendant of the penalties he faced since defendant was provided actual notice of the maximum sentence involved, and any misstatements by court concerning the mandatory minimum period of incarceration were clarified when court stated on the record "[i]t is a six-year mandatory prison sentence," and defendant consulted with counsel before proceeding.

**Plea withdrawal.** *State v. Bridget, 2020-Ohio-6776* | 6th Appellate District | 12/18/20 In a conviction by plea of attempted murder, pre-sentencing Crim.R. 32.1 motion to withdraw plea was not error where trial court evaluated the appropriate factors, including defendant's voluntary, post-Miranda admission to stabbing the victim and that he attempted to hide the knife, and defendant failed to present a reasonable and legitimate reason to withdraw his guilty plea and court of appeals found his reasons to be a mere "change of heart."

**Impaired driving.** *State v. Masin, 2020-Ohio-6780* | 6th Appellate District | 12/18/20 In a conviction by plea of OVI, denial of motion to suppress was not error where officer had a reasonable suspicion of marked lane traffic violations to make a stop of defendant, and officer had probable cause to arrest based on officer's observations of odor of alcohol from defendant, defendant's glassy eyes and slurred speech, and probable cause existed without consideration of the admissibility of the field sobriety tests.

**Impaired driving.** *State v. Chattoo, 2020-Ohio-6800* | 5th Appellate District | 12/18/20 In a conviction by plea of OVI, R.C. 4511.19(A)(1)(a), denial of motion to suppress was error where officer did not have a reasonable suspicion to initiate a traffic stop of defendant where arresting officer who testified was not the officer who made the traffic stop, nor did state present any evidence that the arresting officer received the dispatch regarding the report of a suspected impaired driver.

**Plea.** *State v. Moschell, 2020-Ohio-6818* | 7th Appellate District | 12/18/20 In a conviction by plea of cruelty to companion animals, plea failed to comply with Crim.R. 11(E) where the magistrate failed to advise defendant that a guilty plea is a complete admission of guilt, and plea is vacated.

**Plea withdrawal.** *State v. Krieger, 2020-Ohio-6964* | 7th Appellate District | 12/18/20 In a conviction by plea of unlawful sexual conduct with a minor, denial of pre-sentence motion to withdraw plea was not error where the court of appeals evaluated the relevant factors and found that defendant's counsel provided competent assistance, trial court substantially complied with Crim.R. 11(C), plea withdrawal hearing was adequate and judge gave full and fair consideration to motion, defendant understood the nature of the charges and the potential sentence, defendant did not have a meritorious defense, and motion was based on a change of heart.

**Arson offender registration.** *State v. Carlisle, 2020-Ohio-6750* | Supreme Court of Ohio | 12/21/20 Certification of conflict is dismissed, sua sponte, as having been improvidently certified; the opinion of the court of appeals may not be cited as authority except by the parties inter se.

**Attorney-client privilege.** *State v. Svec, 2020-Ohio-6793* | 9th Appellate District | 12/21/20 In a conviction of, inter alia, murder, denial of motion to dismiss indictment was not error where state's recording of jail call from defendant to his attorney to discuss the case was not admitted at trial, and state did not commit an unauthorized intrusion by recording his telephone call to his attorney from the jail's inmate line that specifically notified parties using the line that calls could be recorded, and thus the recording was not the result of any unauthorized intrusion, and no constitutional violation occurred.

**Hearsay/Confrontation Clause.** *State v. Myers, 2020-Ohio-6792* | 9th Appellate District | 12/21/20 In conviction of assault, admission of investigating officer's testimony of victim's statements to him was not error since statements were excited utterances made within minutes of the alleged assault where officer testified victim was visibly upset, and officer observed that victim still had red marks on her body and that her ear was still bleeding, and no Confrontation Clause issue was established since the primary purpose of the questioning was to address an ongoing emergency.

**Self-defense.** *State v. Adkins, 2020-Ohio-6799* | 3rd Appellate District | 12/21/20 In conviction of, inter alia, murder, R.C. 2903.02(A), trial court did not err by holding that the amended version of the self-defense statute, R.C. 2901.05(B), was not applicable to defendant's case because the indicted offenses occurred prior to the effective date of the self-defense law amendments and, since defendant did not establish he was not at fault for creating the situation, his claim of self-defense fails; also discussed: competency to stand trial.

**Jail-time credit.** *State v. Barnes, 2020-Ohio-6795* | 3rd Appellate District | 12/21/20 In convictions in two cases, denial of additional jail-time credit was not error where claimed credit was properly awarded in an unrelated case, and additional claim for jail-time credit in another case is without merit since appellant is claiming that he is owed jail-time credit for jail time that occurred before the offense in that case.

**Jail-time credit.** *State v. Cheek, 2020-Ohio-6797* | 3rd Appellate District | 12/21/20 In conviction by plea of attempted domestic violence, trial court did not err in its calculation of jail-time credit since defendant was held in jail on a separate offense in another county, and thus he is not entitled to jail-time credit in this case for days incarcerated on another charge pursuant to R.C. 2929.19(B)(2)(g)(i).

**Right to counsel.** *State v. Lane, 2020-Ohio-6798* | 3rd Appellate District | 12/21/20 In a conviction by plea of drug offenses, denial of motion to discharge and for substitution of assigned counsel and of pre-sentence motion to withdraw plea was not error where defendant failed to show good cause for replacement of counsel since in his Crim.R. 11 plea hearing, he stated he was satisfied with his attorney and that no irregularities existed as to his plea and, moreover, he abandoned his motion at his sentencing hearing by reaffirming in open court his satisfaction with his attorney and the plea agreement.

**Bill of particulars.** *State v. Andrus, 2020-Ohio-6810* | 11th Appellate District | 12/21/20 In a conviction of, inter alia, menacing by stalking, trial court did not err by allowing state to present evidence outside of the date range listed in the bill of particulars since the state was required to

establish not only a pattern of conduct, but also a history of violence or violent acts toward the victim or any other person, and evidence of the incidents that took place prior to the dates charged was sufficient to establish a "pattern of conduct," R.C. 2903.211(D)(1).

**New trial.** *State v. Roby, 2020-Ohio-6812* | 11th Appellate District | 12/21/20 In a conviction of felonious assault, denial of motion for new trial based on newly discovered evidence was not error where the alleged post-trial video, claiming to show defendant was not as seriously injured as the evidence at trial indicated, is insufficient since trial evidence demonstrated that defendant knowingly attacked victim, and victim's medical records, along with his testimony, reasonably supported jury's conclusion that defendant's knowing actions caused the victim serious physical harm, R.C. 2901.01(A)(5)(c) and (d).

**Evidence.** *State v. Aboytes, 2020-Ohio-6806* | 11th Appellate District | 12/21/20 In a conviction of, inter alia, rape of 10 year-old stepdaughter, trial court did not err in permitting hearsay testimony from multiple witnesses at trial since statements were admissible as excited utterances, Evid.R. 803(2), nor did court err by permitting expert testimony from the International Association of Forensic Nurses pursuant to Evid.R. 702(A) since an expert may provide testimony that supports "the truth of the facts testified to by the child, or which assists the fact finder in assessing the child's veracity."

**Sentencing.** *State v. Johnson, 2020-Ohio-6807* | 11th Appellate District | 12/21/20 In a conviction by plea of, inter alia, felonious assault and abduction, imposition of sentence to a minimum prison term of four years and a maximum term of six years on felonious assault and 24-months concurrent imprisonment on abduction pursuant to the Reagan Tokes Law, is affirmed since defendant failed to object to the sentence and did not argue plain error on appeal.

**Impaired driving.** *State v. Unrue, 2020-Ohio-6808* | 11th Appellate District | 12/21/20 Conviction of OVI, vehicular assault and failure to stop after an accident met the sufficiency and weight of evidence standards where the evidence presented at trial supports the jury's findings that appellant operated a motor vehicle while under the influence of alcohol in a reckless manner, that she caused serious bodily injury to the victim as a result; and that although she knew she was in an accident, she failed to stop.

**Traffic stop.** *State v. Turner, 2020-Ohio-6773* | Supreme Court of Ohio | 12/22/20 In a certified conflict between court of appeals' judgments as to whether a traffic stop for an alleged violation of R.C. 4511.33(A)(1) is based on a reasonable suspicion, Ohio Supreme Court holds that, based on the plain language of R.C. 4511.33(A)(1), the single solid white longitudinal line on the right hand edge of a roadway does not prohibit "driving on" or "touching" it; judgment is reversed and remanded for determination of whether trooper reasonably believed appellant violated the law by driving on the line, making the stop lawful.

**Court-appointed counsel fees.** *State v. Taylor, 2020-Ohio-6786* | Supreme Court of Ohio | 12/22/20 In a certified conflict between court of appeals' judgments under R.C. 2941.51(D), a trial court in a criminal case may assess court-appointed counsel fees against a defendant without making specific findings on the record to justify the fee assessment; also, an order for

payment of court-appointed counsel fees cannot be included as a part of the defendant's sentence for a criminal conviction.

**Sentencing.** *State v. Patrick, 2020-Ohio-6803* | Supreme Court of Ohio | 12/22/20 In a conviction of, inter alia, aggravated murder and imposition of life sentence with parole possibility after 33 years on defendant, who was a juvenile at the time of the offense, court of appeals was not precluded by R.C. 2953.08(D)(3) from reviewing the sentence when a constitutional claim involving the sentence is raised on appeal, and trial court was required to consider the juvenile offender's age as a mitigating factor before imposing a life sentence under R.C. 2929.03, even if the sentence includes eligibility for parole, Long.

**Evidence.** *State v. Spirnak, 2020-Ohio-6838* | 10th Appellate District | 12/22/20 In a conviction of, inter alia, felony murder, R.C. 2903.02, the trial court did not commit error in the admission of other-acts evidence, Evid.R. 404(B), where the trial court instructed the jury to disregard the other acts evidence of testimony of statements made by defendant to another person involving only that person and not involving the victim.

**Plea withdrawal.** *State v. Simpson, 2020-Ohio-6840* | 10th Appellate District | 12/22/20 Following a 2007 conviction by plea of, inter alia, two counts of aggravated robbery that was affirmed, denial of 2019 successive motion to withdraw plea was not error where the trial court had subject-matter jurisdiction and personal jurisdiction over appellant and, since appellant could have raised his arguments concerning alleged sentencing errors in his original motion to withdraw, the judgment is voidable, not void, and is barred by res judicata, Harper.

**Jurisdiction.** *State v. Nelms, 2020-Ohio-6845* | 5th Appellate District | 12/22/20 Following a 2013 conviction by plea of, inter alia, engaging in a pattern of corrupt activity that was affirmed, denial of 2019 motion to vacate void judgment due to lack of jurisdiction, claiming the count needed to specify the incidents of corrupt activity exceeded \$1,000, was not error since a defective indictment renders a charge voidable, not void, and thus claim was barred by res judicata because it could have been raised in the direct appeal of conviction.

**Impaired driving.** *State v. Pugh, 2020-Ohio-7019* | 4th Appellate District | 12/22/20 In a conviction by plea of OVI, denial of motion to suppress was not error where officer had reasonable suspicion of a traffic violation where officer testified that defendant failed to stop at a stop bar in violation of R.C. 4511.43 since defendant's rear wheels were on the stop bar when he completely stopped, even if it was not possible for defendant to view crossing traffic if he had stopped before the cross bar.

**Sexual predator classification.** *Lingle v. State, 2020-Ohio-6788* | Supreme Court of Ohio | 12/23/20 Under former R.C. 2950.09(F)(2), an out-of-state sexual offender challenging an automatic designation as a sexual predator under former R.C. 2950.09(A) must prove by clear and convincing evidence the reason for the imposition of the lifetime registration requirement in the other state, and additionally prove the reason for the lifetime registration requirement is not substantially similar to a classification as a sexual predator under former R.C. Ch. 2950; former R.C. 2950.09(F) does not allow for a recidivism hearing.

**Mandamus/Prohibition.** *State ex rel. Romine v. McIntosh, 2020-Ohio-6826* | Supreme Court of Ohio | 12/23/20 In pro se mandamus/prohibition action against trial judge in underlying criminal action in which relator alleged the judge had improperly sentenced him twice for murder and aggravated murder in connection with the death of a single person, the claim that the sentence is void is without merit since the imposition of compound sentences for allied offenses is an error in the exercise of jurisdiction, challengeable at sentencing and capable of being remedied on direct appeal, and thus relator had an adequate remedy by way of direct appeal, Harper.

**Second Amendment.** *State v. Weber, 2020-Ohio-6832* | Supreme Court of Ohio | 12/23/20 In conviction of using weapons while intoxicated, R.C. 2923.15, statute is not unconstitutional on its face or as applied under the federal or Ohio constitutions since the statute does not proscribe the mere possession of a firearm or prohibit a person from carrying or using a firearm after consuming alcoholic beverages, but prohibits only the use or carrying of a firearm by an intoxicated person, and state presented evidence that defendant carried a firearm while under the influence of alcohol.

**Double jeopardy.** *State v. Pendleton, 2020-Ohio-6833* | Supreme Court of Ohio | 12/23/20 In conviction of drug offenses, imposition of two punishments for trafficking based on the same, singular mixture of drugs containing heroin and fentanyl violates double jeopardy since the total weight of a mixture containing multiple drugs cannot be used to satisfy the individual-weight element of each drug for sentencing purposes without violating the double jeopardy clause; remanded for re-sentencing.

**Continuance.** *State v. Lawson, 2020-Ohio-6852* | 2nd Appellate District | 12/23/20 In a conviction of drug and related offenses, trial court did not err by not granting defendant's motion to continue the jury trial and to appoint new counsel where the request for a continuance after almost two hours of voir dire was untimely, and an inconvenience to the court, the parties, and the public outweighed other considerations, and request appeared to be based simply on defendant's change of heart about whether to proceed.

**Post-conviction relief.** *State v. Blevins, 2020-Ohio-6860* | 1st Appellate District | 12/23/20 Following a 2002 conviction of murder that was affirmed and denial of multiple, successive petitions for post-conviction relief that were affirmed, denial of 2017 petition for post-conviction relief was not error since petitioner failed to satisfy the R.C. 2953.23(A)(1)(b) jurisdictional requirement of demonstrating an outcome-determinative constitutional violation since the evidence of mental illness offered by petitioner, while plainly probative of the issue whether he had purposely killed victim, was not determinative of that issue.

**Impaired driving.** *State v. North, 2020-Ohio-6846* | 7th Appellate District | 12/23/20 Conviction of OVI, R.C. 4511.19(A)(1)(a), and failing to drive in marked lanes, R.C. 4511.33, met the sufficiency and weight of evidence standards where trooper testified appellant veered left of center four times, she had glassy bloodshot eyes, there was a smell of alcohol, and she also exhibited numerous clues under the field testing as supported by the NHTSA manual, indicating she was impaired.

**Evidence.** *State v. Shropshire, 2020-Ohio-6853* | 2nd Appellate District | 12/23/20 In a bench conviction of criminal damaging, trial court did not err by admitting testimony and physical evidence linking defendant to involvement in damaging her former boyfriend's car where former boyfriend identified defendant and her sister from a security video and stills made from the video showing defendant's car being damaged by the persons he identified, and evidence was admissible pursuant to Evid.R. 901(B)(4) and (5).

**Self-defense.** *State v. Taylor, 2020-Ohio-6854* | 2nd Appellate District | 12/23/20 In a conviction for improperly handling firearms in a motor vehicle, R.C. 2923.16(A), trial court erred by failing to instruct the jury that it could consider self-defense as a defense to that charge, R.C. 2901.05(B)(1), since the charged offense "involved" defendant's use of force against another; remanded for further proceedings.

**Competency.** *State v. Coffman, 2020-Ohio-6855* | 9th Appellate District | 12/23/20 Following a plea of not guilty by reason of insanity of aggravated robbery and adoption of a competency report stipulated to by the parties in which it was concluded there was not a substantial probability that defendant would become capable of standing trial, order maintaining jurisdiction over defendant for 14 years violated his due process rights by determining he committed charged offenses without giving him an opportunity to be heard on that issue, R.C. 2945.39(A)(2)(a); remanded for a R.C. 2945.39(A)(2) hearing.

**Jail-time credit.** *State v. McClafferty, 2020-Ohio-6857* | 9th Appellate District | 12/23/20 In convictions of grand theft and drug possession in two cases, trial court erred when it changed its sentencing entries nunc pro tunc by removing 225 days of jail-time credit that it had awarded appellant at the sentencing hearing since it was a substantive change that did not reflect what had previously occurred in court.

**Plea withdrawal.** *State v. Boyd, 2020-Ohio-6866* | 6th Appellate District | 12/23/20 Following a 2006 conviction by plea of, inter alia, aggravated murder that was not appealed and denial of 2007 motion to withdraw plea, denial of 2020 motion to withdraw plea was not error since challenge is barred by res judicata because issue could have been raised in a direct appeal from conviction but was not, Harper.

**Search.** *State v. Connin, 2020-Ohio-6867* | 6th Appellate District | 12/23/20 In a conviction by plea of cocaine possession, denial of motion to suppress was not error where identified informant whose information regarding defendant's criminal activity was based on the informant's own participation in the activity and, moreover, the good-faith exception applied where the executing officers acted reasonably in relying on the warrant; however, the trial court did err in imposing the costs of assigned counsel since the court failed to find that defendant had the ability to pay the costs of appointed counsel.

**Jury instruction.** *State v. Fisher, 2020-Ohio-6868* | 6th Appellate District | 12/23/20 In a conviction of receiving stolen property, R.C. 2913.51(A) and (C), trial court did not err in giving a jury instruction on receiving stolen property since the instruction permitted the inference of guilt from unexplained possession of recently stolen property.

**Hearsay.** *State v. Terry, 2020-Ohio-6872* | 6th Appellate District | 12/23/20 In a conviction of five counts of rape of daughter who was less than the

age of 10, testimony of two sexual assault nurse examiners' (SANE) testimony regarding the minor's statements that occurred during nurses' separate treatment of the minor was properly admitted pursuant to Evid.R. 803(4), and testimony of the minor's teacher was properly admitted since teacher's primary purpose in questioning minor was to ascertain the reason for her behavior and identify the source of her pain and discomfort, Clark.

**Sex offender registration.** *State v. Scott, 2020-Ohio-6878* | 10th Appellate District | 12/24/20 Bench conviction of failure to provide notice of change of address and failure to register, R.C. 2950.04(C)(4) and 2950.05(A), was supported by the sufficiency and weight of evidence standards where two sheriff's deputies testified that they attempted on 52 occasions at different times of the day during a two-month period to verify that homeless defendant was at the address he listed, but were unable to locate him at the listed location.

**Self-defense.** *State v. Ferrell, 2020-Ohio-6879* | 10th Appellate District | 12/24/20 In a conviction of felony murder, R.C. 2903.02, trial court did not commit plain error by not instructing the jury on the revival of the right to use force in self-defense for an initial aggressor who withdraws from the conflict in good faith under the revised version of R.C. 2901.05(B)(1) since evidence that was presented, including videos of the encounter, demonstrated that defendant was the aggressor, initially at fault for the encounter, and that he never withdrew; also, trial court did not err by not instructing jury on involuntary manslaughter.

**Ineffective assistance.** *State v. Galberth, 2020-Ohio-7021* | 7th Appellate District | 12/24/20 In a conviction by plea of, inter alia, aggravated murder, defense counsel did not provide ineffective assistance where counsel's request for a motion to suppress was denied and counsel obtained a negotiated plea, eliminating a possible life sentence without parole and, during the plea colloquy, defendant stated he was satisfied with counsel's advice and competence, and plea was validly entered into pursuant to Crim.R. 11(C), Dangler.

**Judicial release.** *State v. Williams, 2020-Ohio-6885* | 9th Appellate District | 12/28/20 Following a conviction of, inter alia, drug offenses that was affirmed, subsequent grant of judicial release was error where trial court was required to impose a mandatory 10-year sentence for trafficking and possession of cocaine offenses, and defendant was not an eligible offender under R.C. 2929.20(A)(1)(a) because at the time the motion for judicial release was filed, he had served his non-mandatory sentences and thus he was no longer serving a stated prison term that included one or more non-mandatory prison terms.

**Speedy trial.** *State v. Adams, 2020-Ohio-6886* | 3rd Appellate District | 12/28/20 In conviction by plea of rape, defendant was not denied his right to a speedy trial where defense counsel filed multiple motions for continuance and defendant was bound by his counsel's actions in seeking or agreeing to a continuance, even over defendant's objections, and defendant has not advanced an argument that explains how his defense counsel's requesting four continuances was an institutional problem or a systemic breakdown.

**Sexual imposition.** *State v. Wrasman, 2020-Ohio-6887* | 3rd Appellate District | 12/28/20 Conviction of sexual imposition of minor stepdaughter met the sufficiency and weight of evidence standards

since state presented evidence from which jury could reasonably infer defendant touched victim's erogenous areas for the purpose of sexual gratification, including the circumstances surrounding the touching, combined with defendant's exaggerated and unusual response in apologizing to victim and her mother, supporting a conclusion that the touching was not accidental.

**Restitution.** *State v. Pulley, 2020-Ohio-6898* | 12th Appellate District | 12/28/20 In a conviction by plea of criminal damaging, restitution award of repairs to property damaged by defendant was not error where victims presented competent, credible evidence establishing that 16 of their 24 cabinets were ruined by defendant's actions and the company hired to repair the damage charged \$1,120 to return the cabinets to their original condition, R.C. 2929.28(A)(1).

**New trial.** *State v. Stepp, 2020-Ohio-6901* | 12th Appellate District | 12/28/20 Following a 2007 conviction of, *inter alia*, sex offenses that was affirmed, denial of 2019 pro se motion for leave to file a delayed motion for a new trial was not error where motion was untimely, and appellant failed to present clear and convincing evidence that he was unavoidably prevented from discovering the evidence within the given time frame, Crim.R. 33(B), and moreover, the evidence produced by appellant is inculpatory in nature and effectively strengthened the state's case against him.

**Search.** *State v. Hinkston, 2020-Ohio-6903* | 12th Appellate District | 12/28/20 In drug and weapons prosecution, grant of motion to suppress was error where stop of vehicle in which defendant was a passenger was supported by a reasonable suspicion where an officer experienced with drug activity observed a non-local vehicle arrive at a drug house late at night, passengers entered the house for a short time, officer determined vehicle was registered to a deceased person and knew from experience that drivers of such vehicles often do not have permission to use vehicle, and passenger made suspicious movements indicating an attempt to hide something.

**Sex offender registration.** *State v. Jones, 2020-Ohio-6904* | 12th Appellate District | 12/28/20 Following a conviction of abduction with a sexual motivation and classification as a Tier II sex offender, conviction of failing to provide notice of a change of address, R.C. 2950.05(A), met the sufficiency and weight of evidence standards where two officers testified that they were unable on multiple occasions to verify appellant's address or locate him at his registered address, and owner of property testified that appellant no longer lived at that location.

**Sentencing.** *State v. Kepling, 2020-Ohio-6888* | 3rd Appellate District | 12/28/20 In conviction by plea of felonious assault, imposition of indefinite prison term with a minimum definite term of four years and an indefinite maximum term of six years is affirmed where a challenge to constitutionality of the Reagan Tokes Law as violative of separation of powers is without merit, as well as a facial challenge to procedural due process, Hacker, and claim that due process rights to notice and an opportunity to be heard are not adequately protected is not yet ripe for review.

**Plea.** *State v. Anderson, 2020-Ohio-6891* | 3rd Appellate District | 12/28/20 In conviction by plea of attempted felonious assault, failure to comply with police and cocaine possession, plea was validly made where trial court properly engaged defendant in a plea colloquy pursuant to Crim.R. 11(C), including informing defendant of the possible

imposition of an indefinite sentence, the fact that the court was not bound by a joint sentencing recommendation and that he could receive up to 16 years in prison if he pled guilty.

**Prosecutorial delay.** *State v. Ling, 2020-Ohio-6889* | 3rd Appellate District | 12/28/20 In OVI prosecution, grant of motion to dismiss for delay in prosecution was error where defendant failed to demonstrate she incurred substantial prejudice from the delay, notwithstanding city's loss of the video of traffic stop, and cross-appeal of denial of motion to suppress is dismissed since the effect of reversing judgment of dismissal for prosecutorial delay is that the ruling on the motion to suppress a warrantless collection of urine for analysis is again relevant, but that ruling is provisional, not currently a final appealable order, R.C. 2505.02(A)(3).

**Plea withdrawal.** *State v. Guy, 2020-Ohio-6908* | 12th Appellate District | 12/28/20 In a conviction by plea of failure to comply, R.C. 2921.331(B) and (C) (5)(a)(ii), denial of pre-sentence motion to withdraw plea was not error where trial court considered the factors in determining whether to grant the motion and determined motion was a mere change of heart premised only on defendant's hope that he could serve his Ohio sentence and a separate Indiana sentence concurrently without any basis to expect that his hope would be realized.

**Impaired driving.** *State v. Fensler, 2020-Ohio-6892* | 3rd Appellate District | 12/28/20 Conviction of OVI, R.C. 4511.19(A)(1)(a), was not supported by sufficient evidence since the state presented insufficient evidence that Benadryl, when taken in a quantity exceeding the recommended dosage, can result in impairment of judgment or reflexes since the state's only evidence was the arresting officer's testimony that "[f]our Benadryl is over the recommended dosage" and his "research" regarding the ingestion of Benadryl in a quantity exceeding the recommended dosage, notwithstanding the officer's testimony of field-sobriety test results.

**Gross sexual imposition.** *State v. Rupert, 2020-Ohio-6893* | 3rd Appellate District | 12/28/20 Conviction of two counts of gross sexual imposition of victims under 13 years-old, R.C. 2907.05(A)(4), met the sufficiency and weight of evidence standards where victims' testimony supported that defendant inappropriately touched victims' erogenous zones, and jury did not lose its way in making its credibility determinations; also, prosecutor's isolated statement during closing argument on defendant's credibility was not prejudicial.

**Prosecutorial misconduct.** *State v. Lewis, 2020-Ohio-6894* | 3rd Appellate District | 12/28/20 In a conviction of two counts of gross sexual imposition of a victim under 13 years-old, R.C. 2907.05(A)(4), claim that prosecutor's comments during opening and closing arguments were not based on evidence presented at trial is without merit where statements were not purely conjectural, but an appropriate explanation of the evidence that had been presented at trial to the jury.

**Assault.** *State v. Robinson, 2020-Ohio-6916* | 11th Appellate District | 12/28/20 Inmate's conviction of two counts of assault, R.C. 2903.13(C)(3), was supported by sufficient evidence that the victims assaulted were employees of the state corrections department since, pursuant to R.C. 9.06, an assault on a corrections officers at a private correctional institution is to be considered an assault on a corrections officer at a state facility, Johnson.

**Sealing.** *State v. Herrick, 2020-Ohio-6917* | 11th Appellate District | 12/28/20 In an application to seal the record of a vehicular manslaughter conviction, the trial court did not err in denying application where 83 year-old applicant failed to identify any particular negative economic, social or legal consequences of maintaining the public record, nor did he specifically identify how his privacy interests outweighed the public's right to access the records.

**Indictment.** *State v. Rohn, 2020-Ohio-6918* | 11th Appellate District | 12/28/20 In a conviction of multiple counts of rape and sexual battery of a minor, there was no plain error involving claim that indictment was facially defective under Crim.R. 7(B) concerning the basic facts on which the status "in loco parentis" was based, since defendant was put on notice during discovery that the state intended to argue that he was a person assuming "a dominant parental role" or a person the victim "relied upon" for support.

**Search.** *State v. Haputa, 2020-Ohio-6925* | 5th Appellate District | 12/28/20 In a conviction by plea of drug offense, denial of motion to suppress was error where officers' entry into cell phone tower was not warranted by evidence of any exigent circumstances for officers to believe entry into the structure was necessary to protect or preserve life, to avoid serious injury, or to protect property where facts available to the officers indicated the lawful presence of a person since there were no signs the lock was cut, the gate and the door were left open, lights were on and music was playing, and a vehicle was parked in open view.

**Hearsay.** *State v. Gaston, 2020-Ohio-6919* | 11th Appellate District | 12/28/20 In a conviction of domestic violence, trial court did not err in admitting officer's testimony of statements made by victim implicating defendant since it falls under the present sense impression exception to hearsay; also, transcript of jail call between defendant and victim was not hearsay because victim's statements were offered to provide context for defendant's responses, Evid.R. 801(C).

**Sentencing.** *State v. Miles, 2020-Ohio-6921* | 11th Appellate District | 12/28/20 In a conviction by plea of, *inter alia*, kidnapping with firearm specification, imposition of sentence under the Reagan Tokes Act indefinite sentencing structure was error where the nunc pro tunc entries and transcript of the hearing show defendant was not properly advised of minimum terms for his qualifying first-degree felonies, and court did not properly calculate and advise defendant of his maximum prison term, R.C. 2929.144(B).

**Prosecutorial misconduct.** *State v. Rupert, 2020-Ohio-6893* | 3rd Appellate District | 12/28/20 In a conviction of gross sexual imposition, the trial court did not commit plain error in not finding prosecutorial misconduct where, although prosecutor's comment during closing argument accusing defendant of perjury was improper, it was not prejudicial where it was one isolated statement, the court properly instructed jury that statements made by counsel during closing argument were not evidence, and that jury was the sole judge of the facts, the credibility of the witnesses and the weight of evidence.

**Sentencing.** *State v. Kepling, 2020-Ohio-6888* | 3rd Appellate District | 12/28/20 In a conviction by plea of felonious assault, R.C. 2903.11(A)(1), and imposition of an indefinite prison sentence with a minimum definite term of four years and an indefinite maximum term of six years pursuant to

the Reagan Tokes Act, judgment is affirmed since the Act does not violate the separation of powers, and claim that the Act does not provide adequate due process procedural safeguards is not ripe for review.

**Post-conviction relief.** *State v. Oteng, 2020-Ohio-6939* | 10th Appellate District | 12/29/20 Following a 2014 conviction of, inter alia, murder, trial court did not err in denying petition for post-conviction relief where claim that defense counsel had a conflict of interest rendering him ineffective and that court held the hearing in the absence of a key witness on that issue is without merit where witness was deliberately absent from the hearing, and no steps were taken to subpoena or otherwise compel his presence, thus denying trial court the opportunity to resolve the apparent disparity between the witness' recorded statement taken soon after the shooting and his later-created affidavit.

**Violent offender database.** *State v. Klein, 2020-Ohio-6948* | 1st Appellate District | 12/30/20 Following a 2006 conviction of, inter alia, four counts of kidnapping, denial of 2019 pro se motion challenging, inter alia, violent offender database enrollment was error in part where the trial court declined to review appellant's motion to rebut the R.C. 2903.42(A)(1) violent-offender-database enrollment presumption since R.C. 2903.42(A)(2) (b) permitted appellant to file his motion to rebut the presumption at any time "prior to the time of [his] release from confinement;" remanded for further proceedings.

**Rape.** *State v. Ross, 2020-Ohio-6958* | 2nd Appellate District | 12/30/20 Bench conviction of, inter alia, rape of a person less than 13 years-old, R.C. 2907.02(A)(1)(b), met the sufficiency and weight of evidence standards where victim's testimony was sufficient to establish that defendant engaged in sexual conduct with her against her will and that at that time, she was less than 13 years-old, and an expert witness testified that a DNA sample recovered from the victim's underwear matched defendant's DNA.

**Traffic violation.** *State v. Bowman, 2020-Ohio-6974* | 6th Appellate District | 12/30/20 Conviction of violation of disobeying the instruction of any traffic control device, R.C. 4511.12(A), met the sufficiency and weight of evidence standards where defendant-semi-truck driver was driving in an improper lane of traffic, and R.C. 4513.17(D) does not require an officer's vehicle to have only blue and white lights, and thus officers' vehicles may have a combination of blue, red and white lights, and defendant was not subjected to selective prosecution.

**Violating protection order.** *State v. Gebrosky, 2020-Ohio-6976* | 6th Appellate District | 12/30/20 Conviction of violating a protection order, R.C. 2919.27(A)(1) and (B)(3), met the sufficiency and weight of evidence standards where the protected person and her sister testified that defendant approached them in an alley at night and, even if defendant did not speak to the protected person, he approached her for the purpose of giving their children back to her, revealing that his actions were purposeful, not accidental, and jury determined that protected person's and her sister's testimony was more credible concerning the incident.

**Rape.** *State v. Rodenberger, 2020-Ohio-6979* | 6th Appellate District | 12/30/20 Conviction of, inter alia, rape, R.C. 2907.02(A)(1)(c) and (B), met

the sufficiency and weight of evidence standards where record contained sufficient evidence that victim was asleep when defendant engaged in intercourse with her, and the weight of evidence supported jury's determination that victim was also intoxicated and that defendant knew victim was intoxicated, especially since jury was required to make credibility determinations of the conflicting testimony presented on defendant's state of intoxication.

**Sentencing.** *State v. Sawyer, 2020-Ohio-6980* | 6th Appellate District | 12/30/20 In a conviction by plea of endangering children and imposition of indefinite prison term of a minimum of six years and a maximum of nine years, claim that medical records do not support conviction is without merit where defendant's no contest plea waived the right to present additional affirmative factual allegations, as well as waiving the right to challenge the state's explanation of the facts; challenge to constitutionality of sentence pursuant to Reagan Tokes Act is not ripe for review.

**Felonious assault.** *State v. Stevens, 2020-Ohio-6981* | 6th Appellate District | 12/30/20 Bench conviction of, inter alia, felonious assault met sufficiency and weight of evidence standards since the evidence demonstrated defendant knowingly caused serious physical harm to officer who was attempting to restrain defendant from leaving the scene of a suspected robbery where defendant started his car and drove off while officer had a hand on him and held on through the open driver's side door, resulting in serious injury to officer.

**Attempted grand theft/Breaking and entering.** *State v. Robinson, 2020-Ohio-6978* | 6th Appellate District | 12/30/20 Conviction of attempted grand theft, R.C. 2913.02(B)(4), and breaking and entering, R.C. 2911.13(A), met the sufficiency and weight of evidence standards where testimony from a gun shop owner that a stolen firearm was operable is sufficient to establish operability under R.C. 2923.11(B), and defendant was found inside a gun shop, and there was evidence of a broken window and his blood in the area of the broken glass that demonstrates he forced his way into store, providing sufficient evidence of breaking and entering.

**Ineffective assistance.** *State v. Crist, 2020-Ohio-6975* | 6th Appellate District | 12/30/20 In a conviction of domestic violence and violating a civil protection order, defense counsel did not provide ineffective assistance where, although the trial court did not permit a defense witness to testify due to counsel's failure to ensure that the state received timely disclosure of witnesses, defendant failed to demonstrate prejudice, and other alleged errors by defense counsel were not supported by any argument or legal authority.

**Abduction.** *State v. Haynes, 2020-Ohio-6977* | 6th Appellate District | 12/30/20 Conviction of three counts of abduction, R.C. 2905.02 (A)(1), for the illegal removal of three minor grandsons met the sufficiency and weight of evidence standards where state presented sufficient evidence that defendant abducted his grandsons by "force or threat" since "force" is expressly defined as "any violence, compulsion, or constraint," R.C. 2901.01(A)(1), and includes defendant's physical act of driving children away from the place where they were found, and jury did not clearly lose its way in its credibility determinations.

**Mistrial.** *State v. Tellis, 2020-Ohio-6982* | 6th Appellate District | 12/30/20 In a bench conviction of, inter alia, aggravated robbery, trial court did

not err by not, sua sponte, declaring a mistrial after state allowed its witness to comment on defendant's right to remain silent and then played a portion of the police interview that included defendant asserting his right to remain silent where judge indicated that he would not consider the evidence that was improperly before the court, and defense counsel did not object to references to defendant's right to remain silent or ask for a mistrial.

**Right to counsel.** *State v. Grieco, 2020-Ohio-6956* | 2nd Appellate District | 12/30/20 In a conviction by plea of, inter alia, involuntary manslaughter, the trial court did not err in denying motion to appoint new counsel prior to plea agreement where counsel's representation was exemplary and defendant failed to show a significant breakdown in attorney-client relationship, counsel's advice to accept negotiated plea did not demonstrate bias and, as shown by colloquy, the court's refusal to appoint new counsel did not result in an involuntary plea, Crim.R. 11(C)(2).

**Assault.** *State v. Reese, 2020-Ohio-6957* | 2nd Appellate District | 12/30/20 Conviction of, inter alia, assault met sufficiency and weight standards where testimony and photographic evidence established that defendant injured his girlfriend, hospital discharge instructions showed victim's injuries and indicated she was an assault victim, victim obtained a protection order and reported the assault to the police, and defense witness testimony that victim fell down stairs was found less credible and was inconsistent with her injuries.

**Aggravated menacing.** *State v. Stutz, 2020-Ohio-6959* | 2nd Appellate District | 12/30/20 Conviction of aggravated menacing met sufficiency of evidence standards where defendant-former officer made comments to her son in telephone conversation saying she would shoot the police chief if she had a gun and, although the threat was not made directly to the chief, defendant should have known that her son would relay threat to the police and that it would reach the chief, R.C. 2903.21(A) and 2903.22(B).

**Search.** *State v. Nichols, 2020-Ohio-6960* | 5th Appellate District | 12/30/20 In a conviction by plea of drug possession where defendant's statements in the police car were suppressed because he was not Mirandized, trial court did not err in declining to suppress fruits of search where officer's request to "come here" did not constitute a seizure, officer had probable cause to search vehicle, officer's muting of camera audio was not spoliation of evidence, and drugs and paraphernalia would have been inevitably discovered.

**Ineffective assistance.** *State v. Maxcy-Tipton, 2020-Ohio-6983* | 6th Appellate District | 12/30/20 In a conviction by plea of arson, sentence is vacated and remanded on basis of ineffective assistance of counsel where counsel failed to preserve issue of constitutionality of arson offender registry statute, a cursory review of annotated statute would have shown conflicting holdings in appellate courts, and plea did not result in waiver of issue relating to issues arising after conviction, R.C. 2909.15(D)(2).

**Evidence.** *State v. Baker, 2020-Ohio-7023* | 7th Appellate District | 12/30/20 In a conviction of, inter alia, murder, admission of officer's testimony on GPS data from cell phone data was not plain error since non-experts may testify about a cell phone utilization of a tower to ascertain where a phone

was located at a specific time since mapping of cell site data is capable of being generally performed by a layperson and does not require an expert to testify, Evid.R. 701 and Parks.

**Plea withdrawal.** *State v. Jones, 2020-Ohio-7037* | 4th Appellate District | 12/30/20 In a 2008 conviction by plea of murder, denial of 2018 motion to withdraw plea was not error where, although defendant raised the issue of his competency with the trial court and the court failed to hold a competency hearing since the record does not reveal any indicia of incompetency and the plea colloquy reflects his plea was knowing, intelligent and voluntary, the failure to hold a hearing was harmless error and, also since competency issue could have been raised in a direct appeal, res judicata applies.

**Self-incrimination.** *State v. Gideon, 2020-Ohio-6961* | Supreme Court of Ohio | 12/31/20 In prosecution against physician for sexual imposition, R.C. 2907.06(A)(1), court of appeals erred in holding that trial court erroneously denied motion to suppress statements made by physician to a state medical board investigator where statements were not made under an objectively reasonable belief that physician's medical license would be penalized if he did not cooperate, and thus his statements were voluntary under Garrity; court of appeals also erred by finding appellant's assignment of error on the sufficiency of evidence moot.

**Disorderly conduct/Ethnic intimidation.** *Columbus v. Fabich, 2020-Ohio-7011* | 10th Appellate District | 12/31/20 In a conviction of disorderly conduct and ethnic intimidation, disorderly conduct ordinance is not unconstitutional since it is limited to fighting words, and defendant used a racially derogatory word that is a fighting word when made to a person of another race, and ethnic intimidation ordinance is constitutional since it does not punish the content of fighting words, but punishes the biased motive or reason for the statement regardless of the content of the words used; trial court did err by failing to permit allocution and by failing to sentence on each conviction.

**Reopening.** *State v. Harrison, 2020-Ohio-6967* | 7th Appellate District | 12/31/20 Application to re-open appeal, App.R. 26(B), is denied where claim of ineffective assistance of appellate counsel by not challenging sufficiency of evidence supporting a tampering with evidence conviction is without merit since an investigation regarding whether appellant had a firearm was likely to occur based on his weapons disability, his furtive movements in car during a welfare check, and the obvious presence of drugs since he was smoking marijuana that officers detected when approaching his vehicle.

**Securing writings by deception.** *State v. Kratochvill, 2020-Ohio-7000* | 11th Appellate District | 12/31/20 Conviction of securing writings by deception, R.C. 2913.43(A), met the sufficiency and weight of evidence standards where defendant misrepresented himself as a licensed stockbroker and solicited investments from victims, that he deposited into an account in the name of his mother, falsely stating that the investments were annuities safe from risk, and he ultimately ended up losing their money, and state presented sufficient evidence of a "writing" under R.C. 2913.43(A) and of "deception" under R.C. 2913.01(A).

**Plea.** *State v. McDaniel, 2020-Ohio-7003* | 11th Appellate District | 12/31/20 In a conviction by plea of rape, R.C. 2907.02(A)(1)(b), plea was validly made where the trial court complied with Crim.R. 11(C)(2)(c) since, even though the trial court did not advise defendant of his right to be tried by a jury, defendant had previously waived that right in a written plea agreement and attesting in open court that he unequivocally waived his right to be tried by a jury.

**Appeal.** *State v. Neubig, 2020-Ohio-7006* | 11th Appellate District | 12/31/20 Appeal is dismissed by court of appeals, sua sponte, as untimely filed where appellant has neither complied with the 30-day rule in App.R. 4(A)(1) nor sought leave to appeal pursuant to App.R. 5(A).

**Self-defense.** *State v. Warren, 2020-Ohio-6990* | 11th Appellate District | 12/31/20 In a conviction of, inter alia, murder, R.C. 2903.02(A), and felonious assault, R.C. 2903.11(A)(2), state met its burden of proving beyond a reasonable doubt that defendant did not act in self-defense in the shooting death of victim pursuant to the current version of R.C. 2901.05(B)(1) where state presented evidence showing that defendant was the initial aggressor in the shooting, including video surveillance from multiple angles, and the jury did not lose its way in making its credibility determinations.

**Telecommunications harassment.** *State v. Shuck, 2020-Ohio-6989* | 9th Appellate District | 12/31/20 Bench conviction of telecommunications harassment, R.C. 2917.21(A)(6), was not supported by sufficient evidence since the state failed to demonstrate defendant's purpose was to abuse, threaten or harass recipient with a text message where, although defendant made a racial epithet to mother of his child, the state failed to demonstrate he had the intent to abuse, threaten or harass her with his text message where he told recipient she "will never get anything" since it is vague and lacked specificity of an intent to harm.

**Hearsay.** *State v. Yates, 2020-Ohio-6991* | 9th Appellate District | 12/31/20 In a bench conviction of, inter alia, domestic violence, admission of statements about what occurred during a dispute involving defendant and his family as excited utterances was not error where defendant's wife's and son's statements to officers were made shortly after officers arrived, and officers testified wife was nervous and anxious in defendant's presence, and crying, shaking and breathing heavily when talking with officer, and defendant's son was crying and frantic when officers arrived, Evid.R. 803(2).

**Drug offenses.** *State v. Saffell, 2020-Ohio-7022* | 7th Appellate District | 12/31/20 Conviction of, inter alia, possession of and trafficking in methamphetamine met the sufficiency and weight of evidence standards since the filler found in a drug pipe is considered as part of the weight of the methamphetamine for the possession charge, Gonzales II, and the trafficking charge was supported by photo stills from a video recording of an informant purchasing methamphetamine in a distinctive package from defendant that was identical to packages found at defendant's residence during a subsequent search.

**Speedy trial.** *State v. Wood, 2021-Ohio-2* | 5th Appellate District | 1/4/21 In a conviction by plea of misdemeanor OVI, R.C. 4511.19(A)(1)(a), defendant's right to a speedy trial, R.C. 2945.71(B), was violated where charges arose from the same facts as did the original charge of felony in abusing harmful intoxicants, state knew of those facts at the time

of the initial indictment, and over 270 days had elapsed from when the state had filed the abusing harmful intoxicants charge.

**Sexual offender registration.** *Wolf v. State, 2021-Ohio-5* | 1st Appellate District | 1/6/21 Following a 2007 Illinois conviction by plea of aggravated criminal sexual abuse and requirement to register as a sexual offender in Illinois for life and appellant's 2017 relocation to Ohio, and challenge to lifetime registration as a sexual predator under Megan's Law pursuant to former R.C. 2950.09(F), appeal of denial of petition to be reclassified as a pre-Adam Walsh Act sexually-oriented offender is remanded for a determination under former R.C. 2950.09(F)(2) pursuant to the criteria set forth in Lingle.

**Plea.** *State v. Buggs, 2021-Ohio-39* | 4th Appellate District | 1/6/21 In a conviction by guilty plea of having weapons while under disability, plea was not validly made where defendant received incorrect information from the trial court during the plea hearing that a guilty plea would preserve his right to appeal the ruling on his speedy trial motion, and but for that incorrect information, defendant would not have pled guilty.

**Speedy trial.** *State v. Ervin, 2021-Ohio-47* | 4th Appellate District | 1/6/21 In prosecution of third-degree felony failure to comply, grant of motion to dismiss on statutory speedy trial grounds was error where, although defendant was incarcerated on other charges and state conceded that the 180-day speedy trial limit in R.C. 2941.401 applied, the tolling provisions of R.C. 2945.72 also applied to multiple delays in the trial by both parties, ultimately resulting in a timely prosecution.

**Ineffective assistance.** *State v. Bateman, 2021-Ohio-57* | 4th Appellate District | 1/6/21 In a conviction by plea of guilty to tampering with evidence, R.C. 2921.12(A)(1), claim of ineffective assistance of counsel is without merit since a defense counsel's failure to raise a claim of a speedy trial violation does not cause a defendant's waiver of speedy trial rights to be less than knowing and voluntary, Greeno.

**Search.** *State v. Pritchett, 2021-Ohio-9* | 8th Appellate District | 1/7/21 In a conviction by plea of carrying a concealed weapon, denial of motion to suppress was error where search of defendant's backpack was the result of a Terry stop, and defendant did not voluntarily hand over his backpack since officers stated that his release was based on having his backpack searched, but the reason for stop and investigation no longer existed because officers were informed during the encounter that suspected ATMs thefts had been cleared.

**Witnesses.** *State v. Umstead, 2021-Ohio-10* | 8th Appellate District | 1/7/21 In a bench conviction of aggravated menacing, the trial court erred by not allowing defendant to conduct a recross-examination of the only eyewitness, who was the alleged victim's girlfriend and the defendant's former girlfriend, since trial court's blanket policy prohibiting all recross-examination denied defendant a fair trial; remanded for new trial.

**Search.** *State v. Dorroh, 2021-Ohio-12* | 8th Appellate District | 1/7/21 In a conviction by plea of weapons offenses, denial of motion to suppress was error where a search of defendant's backpack was the result of a Terry stop, and defendant did not voluntarily hand over his backpack since officers stated his release was based on having his backpack searched, but the reason for stop and

investigation no longer existed because officers were informed during encounter that suspected ATMs thefts had been cleared.

**Plea.** *State v. Anderson, 2021-Ohio-22* | 6th Appellate District | 1/8/21 In a conviction by plea of attempted rape and reversal on appeal based on court of appeals' determination that plea was invalid for trial court's failure to comply with Crim.R. 11(C)(2)(a) by not fully informing defendant of residential restrictions, but on certification of conflict that the Ohio Supreme Court reversed and remanded for application of Dangler, requiring defendant to show prejudice, the court of appeals found nothing in the record demonstrating that defendant would not have pled had he known of sex-offender classification requirements.

**Telephone harassment/Aggravated menacing.** *Toledo v. Levesque, 2021-Ohio-27* | 6th Appellate District | 1/8/21 Bench conviction of telephone harassment and aggravated menacing met the sufficiency and weight of evidence standards where victim testified that she recognized defendant's voice on threatening telephone calls made to her, and trial court found victim's testimony credible.

**Domestic violence.** *State v. Pritchard, 2021-Ohio-28* | 6th Appellate District | 1/8/21 Conviction of domestic violence, R.C. 2919.25(A), (D)(1) and (D) (3), met the sufficiency and weight of evidence standards where victim testified that defendant, whom she lived with, choked, punched and slapped her causing a swollen lip and significant bruising to her arms and neck, and photographs were admitted depicting bruising to victim's neck and significant bruising to her arms, and jury did not lose its way in making its credibility determinations.

**Felony murder.** *State v. Lambert, 2021-Ohio-17* | 2nd Appellate District | 1/8/21 Conviction of, inter alia, felony murder and improperly discharging a firearm at or into a habitation met the sufficiency and weight of evidence standards, the trial court did not err by not instructing the jury on the offenses of involuntary manslaughter and reckless homicide as lesser-included offenses of felony murder, nor did the court err by not merging for sentencing the convictions for improperly discharging a weapon at or into a habitation with felony murder.

**Violating protection order.** *State v. Broadus, 2021-Ohio-19* | 2nd Appellate District | 1/8/21 Bench conviction of violating a protection order, R.C. 2919.27(A)(1), met the sufficiency and weight of evidence standards where two of the victim's minor daughters told victim that defendant had come to their residence and, although there was some inconsistencies in the testimony of victim's minor daughters, the trial court determined beyond a reasonable doubt that defendant went to protected party's house on the date claimed in violation of the protection order.

**Competency.** *State v. McConnell, 2021-Ohio-41* | 5th Appellate District | 1/8/21 In a conviction by plea of felonious assault in which defendant was found competent to stand trial, denial of defendant's motion for a second competency evaluation was not an abuse of discretion where defense counsel's claim that a second evaluation by a different doctor would lead to a different opinion did not provide a sufficient reason for a second evaluation since defense counsel did not question the prior evaluators of their methodology or analysis, R.C. 2945.371(A).

**Discovery.** *State v. Bellamy, 2021-Ohio-40* | 5th Appellate District | 1/8/21 In a conviction of, inter alia, six counts of rape of a victim less than ten years-old, it was prejudicial error to permit state to introduce expert testimony where state failed to provide timely discovery concerning an expert witness in violation of Crim.R. 16(K), and the error was not harmless since the case depended entirely on the credibility of the alleged victim and her forensic interview, Boaston.

**Jail-time credit.** *State v. McKinnon, 2021-Ohio-35* | 12th Appellate District | 1/11/21 In conviction in three separate cases, the trial court did not err by awarding jail-time credit for two concurrent sentences in two of the cases, but not awarding jail-time credit in the third case ordered to be served consecutively to the other two cases since the one-time credit properly awarded for the concurrent sentences reduced the entire prison sentence by the amount of time appellant served in jail prior to his sentencing, and thus reduced the total length of the sentence.

**Impaired driving.** *State v. Breucker, 2021-Ohio-31* | 9th Appellate District | 1/11/21 In prosecution of OVI and improperly operating a snowmobile in which defendant was convicted of the snowmobile charge, but jury was hung on the OVI charge and on bench retrial of the OVI charge, court did not err in finding defendant guilty of OVI based on his prior conviction of the snowmobile offense since the circumstantial evidence was sufficient to demonstrate defendant had been operating the snowmobile, and court did not lose its way in making its credibility determinations in view of defendant's inconsistent testimony.

**Ineffective assistance.** *State v. Rudasill, 2021-Ohio-45* | 10th Appellate District | 1/12/21 In a conviction of, inter alia, murder, defense counsel was not ineffective in not moving to suppress defendant's statements to police made after he received Miranda warnings since there is no indication in the record that his age and inexperience prevented him from acting voluntarily and there is no indication of police coercion, a witness' statements regarding events on day of murder did not constitute hearsay where based on witness' observations, and there was not sufficient evidence of abandonment to support a jury instruction on that defense.

**Expert witness.** *State v. Bonner, 2021-Ohio-56* | 5th Appellate District | 1/13/21 In a conviction of gross sexual imposition, the trial court did not err in permitting state's DNA expert to testify on the results of Y-STR DNA testing where a witness testified that the results were "inconclusive" based on state's policy, even though the expert's explanation as to why the results were inconclusive may have caused some jury confusion since defense counsel cross-examined the expert and was able to reinforce that the results were inconclusive, and thus the testimony did not advance state's case nor prejudice defendant.

**Reopening.** *State v. Mills, 2021-Ohio-52* | 9th Appellate District | 1/13/21 Application to re-open appeal, App.R. 26(B), is granted in part where the trial court did not properly impose post-release control, and thus that part of appellant's sentence is set aside and appellant is entitled to a new sentencing hearing limited to proper imposition of post-release control; claim that statute of limitations had run on weapons offense is without merit since statute did not begin to run until a CODIS match in 2011 of defendant with weapon used in the robbery, and charges were brought prior to expiration of the statute of limitations.

**Self-defense.** *State v. Moore, 2021-Ohio-54* | 9th Appellate District | 1/13/21 In a conviction of, inter alia, felony murder, state presented sufficient evidence that defendant did not act in self-defense under new self-defense law, R.C. 2901.05(B)(1), where defendant failed to make an argument under the amended self-defense law, but instead argued he acted in self-defense under the pre-amendment law, and court of appeals declined to develop an argument on defendant's behalf and, moreover, the trial court instructed jury pursuant to the amended statute.

**Ineffective assistance.** *State v. D-Bey, 2021-Ohio-60* | 8th Appellate District | 1/14/21 In a conviction by plea of attempted domestic violence and a weapons offense, claim of ineffective assistance of counsel is without merit where claim that attempted domestic violence is a nonexistent offense is without merit since it was part of a negotiated plea agreement, and nothing in the record supports defendant's claim that defense counsel failed to properly advise him regarding the offenses to which he pled, nor was counsel ineffective in not raising alleged defendant's mental health issues.

**Evidence.** *State v. S.D.K., 2021-Ohio-63* | 8th Appellate District | 1/14/21 In a conviction of violating a protection order, R.C. 2919.27(A)(1), admission of a prior conviction of violation of a protection order was not error since it is an element of the offense charged, and state elicited no testimony of any facts underlying the previous conviction other than the fact that it was stipulated to, and witness merely confirmed the judgment entry was a conviction for a 2018 violation of a protection order.

**Jury instruction.** *State v. Blanton, 2021-Ohio-65* | 8th Appellate District | 1/14/21 In a conviction of aggravated robbery, the trial court did not commit plain error by not giving jury the statutory definition of theft as part of its instruction on aggravated robbery since the definition of theft is a term of common usage, and defendant admitted on cross-examination that he forcefully took a gun from victim while defendant was brandishing a gun.

**Hearsay.** *Columbus v. C.G., 2021-Ohio-71* | 10th Appellate District | 1/14/21 In a bench conviction of assault and domestic violence, admission of witnesses' testimony of statements made by victim who failed to appear at trial was not error where statements were excited utterances admissible under Evid.R. 803(2), even if made more than two hours after the alleged incident since the out-of-court statements related to the assault of the victim and were made before the nervous excitement lost domination over her reflective capabilities, Taylor; also the Confrontation Clause did not apply to non-testimonial hearsay under the objective-witness test.

**Plea.** *State v. Hughes, 2021-Ohio-111* | 4th Appellate District | 1/14/21 In a conviction by Alford plea of gross sexual imposition, the trial court erred by failing to adequately determine that there was a factual basis for plea since there is a complete absence in the record of the basic facts surrounding the charge, and thus the trial court could not evaluate the intelligence and voluntariness of the plea, notwithstanding defendant's insistence of innocence; plea is vacated and cause is remanded.

**Evidence.** *State v. Bengé, 2021-Ohio-152* | 4th Appellate District | 1/14/21 In a conviction of rape, R.C. 2907.02(A)(2), the trial court did not err by not allowing defendant to present testimony by the

doctor who completed a report on defendant's competency to stand trial to present testimony related to his claim of diminished capacity since diminished capacity is not recognized as a defense in Ohio and, moreover, defendant did argue at trial about his personal understanding of his contact with the victim, but the jury rejected that argument.

**Jail-time credit.** *State v. Hearn, 2021-Ohio-86* | 6th Appellate District | 1/15/21 Appeal of calculation of jail-time credit in consolidated cases is dismissed for lack of an actual controversy because there is only a potential controversy of the jail-time credit awarded in two cases that defendant received consecutive sentences since providing the full amount of jail-time credit in one case and zero days in another case could result in a bureaucratic error in calculation of jail credit only if the sentence in the case granting the full credit is someday declared void, raising only a potential controversy.

**Ineffective assistance.** *State v. Massucci, 2021-Ohio-88* | 6th Appellate District | 1/15/21 In a conviction of aggravated vehicular homicide, R.C. 2903.06(A)(1)(a), based on defendant's driving with a prohibited concentration of marijuana metabolite in his blood, defendant received ineffective assistance of counsel because defendant's privileged medical records prior to the charged offense were disclosed in violation of R.C. 2317.02(B)(1), and defendant incurred prejudice from the unlimited admission of those records, including his statements of recent drug use prior to the charged offense.

**Plea.** *State v. Mitten, 2021-Ohio-89* | 6th Appellate District | 1/15/21 In a conviction by plea of failure to comply, R.C. 2921.331(B), plea was validly made where the trial court substantially complied with Crim.R. 11(C)(2)(a) by informing defendant of the maximum penalty that could be imposed and that the court could impose a driver's license suspension, and the written plea agreement signed by defendant included a reference to the statutory section governing the suspension.

**Reopening.** *State v. Baldwin, 2021-Ohio-84* | 6th Appellate District | 1/15/21 Application for re-opening appeal, App.R. 26(B), is granted in conviction of, inter alia, theft since the trial court erred by denying appellant's objection to testimony concerning alleged threats made against a state's witness by appellant's brother where it was not shown that appellant was connected to the threats, Evid.R. 402 and 403, and error was not harmless.

**Ineffective assistance.** *State v. Womack, 2021-Ohio-98* | 3rd Appellate District | 1/19/21 In a conviction of drug possession, defense counsel did not provide ineffective assistance by not filing a motion to suppress evidence from a traffic stop where a reasonable, articulable suspicion existed for the stop since the officer testified that the defendant did not give a proper turn signal, the officer did not detain the defendant longer than necessary to accomplish purpose of the stop while an officer had a drug dog conduct an open-air sniff during time the officer who made stop was issuing a warning, and dog's reliability was sufficiently established.

**Plea.** *State v. Robinson, 2021-Ohio-97* | 3rd Appellate District | 1/19/21 In a conviction of, inter alia, attempted felonious assault, plea was validly made since claim that the court did not advise the defendant during plea colloquy that potential violations of post-release control (PRC) could lead to prison terms of up to nine months rendered

the plea invalid is without merit since the court provided some PRC advisements, including that a mandatory period of PRC would be imposed for a violation, nor did appellant demonstrate prejudice since he signed a plea agreement containing the PRC period and other relevant PRC information.

**Plea.** *State v. Tutt, 2021-Ohio-9* | 12th Appellate District | 1/19/21 In a conviction of two counts of rape, appellant's claim that plea was not validly made because the court mistakenly overstated the possible maximum sentence under the Reagan Tokes Act during the plea colloquy is without merit since the court realized its mistake at the sentencing hearing and, before imposing sentence, corrected its advisement and gave appellant an opportunity to "change his position" on his plea, but appellant declined and through counsel indicated that he would proceed with sentencing.

**Search.** *State v. Philabaum, 2021-Ohio-102* | 5th Appellate District | 1/19/21 In state's appeal of grant of a motion to suppress in prosecution of drug offenses, the trial court erred in part since affidavit in support of search warrant contained an address and a detailed description of the residence to be searched, stated the controlled buy dates and that all three controlled buys either took place at the residence and/or with a co-defendant, affidavit was more than just "bare bones," and thus the resulting seizure of contraband met the standards of the "good-faith exception" to the exclusionary rule.

**Search.** *State v. Madison, 2021-Ohio-103* | 5th Appellate District | 1/19/21 In state's appeal of grant of a motion to suppress in prosecution of drug offenses, the trial court erred in part since affidavit in support of search warrant contained an address and a detailed description of the residence to be searched, stated the controlled buy dates and that all three controlled buys either took place at the residence and/or with a co-defendant, affidavit was more than just "bare bones," and thus the resulting seizure of contraband met the standards of the "good-faith exception" to the exclusionary rule.

**Search.** *State v. Arthur, 2021-Ohio-104* | 5th Appellate District | 1/19/21 In state's appeal of grant of a motion to suppress in prosecution of drug offenses, trial court erred in part since affidavit in support of search warrant contained an address and a detailed description of the residence to be searched, stated the controlled buy dates and that all three controlled buys either took place at the residence and/or with a co-defendant, affidavit was more than just "bare bones," and thus the resulting seizure of contraband met the standards of the "good-faith exception" to the exclusionary rule.

**Confrontation Clause.** *State v. Roberts, 2021-Ohio-90* | 5th Appellate District | 1/19/21 In a conviction of drug offenses, the trial court did not err in admitting state's videos of undercover drug buys involving a confidential informant, who was deceased at the time of trial, since statements on the recordings made by the informant to the defendant and a co-defendant were non-testimonial in nature since not the result of any official examination, and thus the Confrontation Clause does not bar them.

**New trial.** *State v. Abouelhana, 2021-Ohio-91* | 9th Appellate District | 1/19/21 In a conviction of drug and related offenses, denial of motion for new trial was error where, although neither defendant nor his counsel requested an

interpreter prior to the filing of the motion, the court failed to make a sufficient inquiry to assess whether an interpreter was needed, and the evidence before the court at the hearing on the motion demonstrated that defendant did require an interpreter.

**Restitution.** *State v. Board, 2021-Ohio-92* | 9th Appellate District | 1/19/21 In a conviction by plea of failing to stop after a motor vehicle accident with a person on a public roadway and for driving under suspension, award of restitution was error in part since defendant and state agree that the award exceeded restitution authorized by the relevant restitution statutes involved in this case, and the trial court failed to consider the applicability and intersection of the restitution provisions in R.C. 4549.02(B)(4), 4510.11(G), 2929.18(A)(1), and 2929.28(A)(1); remanded for further proceedings.

**Search.** *State v. Newman, 2021-Ohio-119* | 5th Appellate District | 1/19/21 In a conviction by plea of felony drug and related offenses, denial of motion to suppress was not error since the trooper had reasonable cause to make a traffic stop for speeding, the trooper did not unreasonably prolong the stop since he was still in the process of conducting the traffic stop when he walked his K9 around appellant's vehicle while appellant was looking for proof of insurance, K9's narcotics training and reliability had been certified prior to the stop, and the trial court found defendant's K9 expert witness lacked credibility.

**Sex offenses.** *State v. Nunley, 2021-Ohio-117* | 5th Appellate District | 1/20/21 Conviction of multiple sexual offenses, including rapes of three minors, met the sufficiency and weight of evidence standards where the state presented sufficient evidence of victims' ages, that they were not his spouses, that defendant engaged in sexual conduct with them during the relevant time period, and the jury did not lose its way in making its credibility determinations and resolution of conflicting evidence.

**Assault.** *State v. Johnson, 2021-Ohio-116* | 1st Appellate District | 1/20/21 Bench conviction of assault, R.C. 2903.13, met the sufficiency and weight of evidence standards where the victim testified that the defendant came to his home claiming to be there to pick up his son whom he had with the victim's wife and struck him, causing injuries, state presented photographs showing victim's injuries, victim testified he went to hospital emergency room and, although defendant testified that victim accidentally injured himself, the trial court was free to disbelieve defendant's testimony and did not lose its way in making its credibility determinations.

**Self-defense.** *State v. Kerens, 2021-Ohio-127* | 5th Appellate District | 1/20/21 In a conviction of murder, the trial court did not commit plain error by not giving a self-defense instruction to the jury that they must presume defendant acted in self-defense pursuant to R.C. 2901.05 since, even if the jury had been instructed that defendant was presumed to have acted in self-defense, the jury was instructed and found the state rebutted any finding that defendant acted in self-defense beyond a reasonable doubt, and the outcome of the trial would not have been otherwise had the presumption instruction been given.

**Speedy trial.** *State v. Forrest, 2021-Ohio-122* | 8th Appellate District | 1/21/21 In a conviction by plea of, inter alia, attempted rape, defendant was not denied his constitutional right to a speedy trial where defendant caused most of the delay by



## Criminal Law (continued)

filing motions for continuances, a pro se motion for mental incompetency, a motion to disqualify counsel with new counsel filing a motion for discovery and continuance, and defendant failed to demonstrate prejudice from the delays, Barker.

**Plea withdrawal.** *State v. Davic, 2021-Ohio-131* | 10th Appellate District | 1/21/21 Following a 2011 conviction by plea of, inter alia, four rape offenses that was affirmed and numerous post-conviction motions that were denied or resulted in nunc pro tunc corrective entries, denial of 2019 "Motion to Vacate Void Plea Agreement," treated as a Crim.R. 32.1 motion to withdraw plea, is affirmed since the trial court lacked subject-matter jurisdiction to consider the motion subsequent to an appeal and an affirmation of the conviction, Special Prosecutors and, moreover, judgment was not void, Harper.

**Evidence.** *State v. Hill, 2021-Ohio-132* | 10th Appellate District | 1/21/21 In a conviction of felonious assault, trial court did not err in allowing state to present evidence of defendant's prior conviction of felonious assault since defendant testified at trial, and Evid.R. 609(A)(2) allows state to impeach a defendant's credibility with evidence of a conviction of an offense punishable by imprisonment in excess of one year, nor was it barred by Evid.R. 403 or 404(B) under the evidence presented.

**Impaired driving.** *State v. Scott, 2021-Ohio-156* | 5th Appellate District | 1/21/21 Conviction of OVI and a refusal to submit to an OVI test met the sufficiency and weight of evidence standards where officer testified defendant had bloodshot and glassy eyes, slurred speech, a strong odor of alcohol, and failed several field tests that were performed in substantial compliance with NHTSA standards, and jury did not lose its way in making its credibility determinations.

**Forfeiture.** *State v. Thomas, 2021-Ohio-151* | 6th Appellate District | 1/22/21 In a conviction by plea of, inter alia, cocaine possession that included defendant's consent to forfeiture of seized cash, the trial court did not err by denying non-party's subsequent motion to intervene in the forfeiture proceeding since the motion was untimely in light of the forfeiture agreement, non-party's awareness of the forfeiture proceedings, the lack of evidence of his ownership of seized cash to support intervention and the prejudice to the parties posed by his attempts to reverse the final resolution of the forfeited cash.

**Sentencing.** *State v. Baker, 2021-Ohio-140* | 2nd Appellate District | 1/22/21 In state's appeal of sentence imposed in conviction by plea of attempted rape, the trial court erred by declaring the Reagan Tokes Act unconstitutional and imposing a definite sentence of two years, instead of imposing an indeterminate sentence as required by the Act, since the court of appeals of this district has held that the Act is constitutional, Sinkhorn.

**Theft.** *State v. Davis, 2021-Ohio-142* | 2nd Appellate District | 1/22/21 Conviction of two counts of theft, R.C. 2913.02(A)(1), met the sufficiency and weight of evidence standards where victim testified that he entered a casino with a cell phone, credit cards and \$4,900 in cash in his wallet, and casino security camera footage showed defendant picking up items off the floor behind where victim was sitting, and defendant turned in only the cell phone to security.

**Appeal.** *State v. Dorsey, 2021-Ohio-143* | 2nd Appellate District | 1/22/21 In convictions in two cases by plea of felonious assault in one case and a weapon offense in the other case, and appellant filed a motion to withdraw plea only in the felonious assault case that was denied, appeal of the weapon offense conviction is dismissed since appellant did not file a motion to withdraw plea in this case, and thus there is no judgment to review on that issue.

**Ineffective assistance.** *State v. Hoffman, 2021-Ohio-155* | 5th Appellate District | 1/22/21 In a conviction of two counts of burglary, defense counsel did not provide ineffective assistance by not objecting to the admissibility of defendant's prior theft offenses on the grounds they were over ten years old where counsel did object and, moreover, convictions were admissible under Evid.R. 609(B); counsel's not requesting a jury instruction limiting admissibility of defendant's prior convictions for purposes of impeachment was reasonable trial strategy to avoid highlighting defendant's prior convictions.

**Engaging in a pattern of corrupt activity.** *State v. Halka, 2021-Ohio-149* | 6th Appellate District | 1/22/21 In a conviction of drug-related offenses, conviction of engaging in a pattern of corrupt activity, R.C. 2923.32(A)(1) and (B)(1), the trial court committed plain error by permitting state to present generalized testimony concerning drug cartels in other countries to link those drug cartels to defendant where no witness testified that the cocaine seized originated in another country and was purchased by defendant from a cartel, and state also failed to show any association of defendant with any other person or organization.

**Ineffective assistance.** *State v. Laws, 2021-Ohio-166* | 3rd Appellate District | 1/25/21 In a conviction of, inter alia, aggravated robbery, defense counsel did not provide ineffective assistance by not, inter alia, obtaining surveillance video from a store that appellant claimed would show he was there when the robbery in this case occurred at another location since store no longer had any video of the time period, attorney's reasons for not calling more than one alibi witness are not part of the record, appellant's conclusory statements of a recording would have been "potentially exculpatory" and that counsel was inadequately prepared are insufficient.

**Speedy trial.** *State v. Basford, 2021-Ohio-161* | 9th Appellate District | 1/25/21 In a conviction of drug offenses, claim of a speedy trial violation is without merit since defendant's motion for an independent analysis of a substance alleged to be contraband is a tolling event for speedy trial purposes, and state did not improperly extend time that was taken to perform test.

**New trial.** *State v. Miller, 2021-Ohio-162* | 12th Appellate District | 1/25/21 In a conviction of, inter alia, inducing panic, R.C. 2917.31(A)(3)(c), denial of motion for a new trial was not error where indictment and jury instructions concerning inducing panic sufficiently identified the underlying offense since defendant was charged with offenses that would support predicate offenses for the inducing panic charge, namely child endangering, abduction and domestic violence, and jury was instructed on each of the underlying offenses.

**Ineffective assistance.** *State v. Watkins, 2021-Ohio-163* | 12th Appellate District | 1/25/21 In a conviction by plea of cocaine possession, defense counsel did not provide ineffective assistance where counsel's incorrect statement

that defendant was out on bond when seeking a continuance did not prejudice defendant, counsel was not required to obtain defendant's consent prior to requesting a waiver of his speedy trial rights, and counsel was not ineffective for not filing a motion to suppress based on a chain of custody argument since that argument must be raised in a motion in limine.

**Evidence.** *State v. Schatzinger, 2021-Ohio-167* | 3rd Appellate District | 1/25/21 In a conviction of, inter alia, corruption of another with drugs, claim that the trial court erred by making an inference upon an inference is without merit since the jury could properly infer from the evidence presented of defendant's course of conduct over time that he provided victim various kinds of controlled substances, causing her to form a drug dependency that progressed over time from marijuana to pills to heroin.

**Plea withdrawal.** *State v. Sauceman, 2021-Ohio-172* | 11th Appellate District | 1/25/21 In a conviction by plea of first-degree misdemeanor OVI, R.C. 4511.19(A)(1), denial of motion to withdraw plea was error where the record fails to show that the trial court advised defendant that her plea of guilty was a complete admission of guilt, Crim.R. 11(E) and Traf.R. 10(D).

## Disability Law

**Medicaid audit.** *Physician's Ambulance Serv., Inc. v. Ohio Dept. of Medicaid, 2020-Ohio-6842* | 20th Appellate District | 12/22/20 In ambulance service's appeal of adjudication order issued by state department of Medicaid in which an audit calculated overpayments of Medicaid charges, trial court did not err in finding that adjudication order was supported by reliable, probative and substantial evidence where ambulance service's expert was extensively questioned about his criticism of the method used to determine overpayment, and the record shows that the hearing examiner understood the logic underlying the expert's opinion but was not convinced, R.C. 119.12.

## Education Law

**Contract.** *State ex rel. Unterbrink v. Elida Local Schools Bd. of Edn., 2020-Ohio-5378* | 3rd Appellate District | 11/23/20 In teacher's petition for a writ of mandamus seeking to compel school board to reinstate his limited teaching contract or rescind its termination action, summary judgment in favor of board was not error where teacher had actual notice in letter from superintendent that board was revoking his teaching contract, teacher knew long before filing petition that his contract had been terminated for failure to pass educator assessment, and teacher had an adequate remedy at law by filing an R.C. 3319.16 appeal challenging respondent's order, but he failed to use that remedy.

**Compensation.** *Adams v. Parallel Emp. Group, Inc., 2020-Ohio-6766* | 2nd Appellate District | 12/18/20 In relators-substitute teachers' petition for writ of mandamus to compel staffing services company to compensate them in accord with school district master contract, trial court did not err in dismissing complaint since relators failed to establish that respondent clearly owed them a duty to provide compensation under R.C. 3319.10 or that a private party may be compelled to fulfill a duty imposed by statute on public agency, and relators failed to show they lacked a remedy in the ordinary course of law, R.C. 2731.01.

**Employment.** Niles Edn. Assn. v. Niles City School Dist. Bd. of Edn., 2020-Ohio-6804 | 11th Appellate District | 12/21/20 In teacher's and association's action against board of education to declare that grievance challenging teacher's "disciplinary dismissal" is substantively arbitrable and that the CBA's grievance and arbitration procedure is the sole forum to challenge teacher's contract termination, it was error to grant summary judgment to board on reasoning that the term "discipline" did not include termination, and in the process, determining the issue of arbitrability on the basis of the scope of a substantive provision in the CBA rather than on the basis of the scope of the arbitration provision.

**Appeal.** Franta v. State Teachers Retirement Sys., 2020-Ohio-6843 | 10th Appellate District | 12/22/20 In system's denial of teacher's application for disability benefits, it was not error to grant summary judgment to system in response to teacher's petition for writ of mandamus to compel system to allow her and attorney to personally appear before disability review panel, arguing that system did not comply with notice requirements in Ohio Adm. Code 3307:1-7-05, resulting in her untimely request to personally appear before disability review panel where teacher and attorney were properly notified by letter that stated appeal options, and they read letter, evidenced by the fact that they provided additional medical information, as outlined in letter.

**Tenure.** Pagano v. Case W. Res. Univ., 2021-Ohio-59 | 10th Appellate District | 1/14/21 In breach of contract action by professor denied tenure, it was error to grant summary judgment to university since a jury could find that pre-tenure reviews show that university encouraged professor to apply for tenure as a hybrid scientist, yet proceeded to review her according to inapplicable independent scientist criteria; also, tenure committee failed to take minutes, preventing dean, provost and president from an explanation of committee's vote for tenure, and a jury could find that failure to record and distribute minutes prejudiced professor.

## Employment Law

**Discrimination.** Davis v. Cinnamon Lake Assn., Inc., 2020-Ohio-5374 | 9th Appellate District | 11/23/20 In disability discrimination action by employee, who has cancer, against employer for not retaining him as a permanent employee after probationary period, summary judgment for employer was not error since employee failed to show he was disabled during employment or that employer was aware of his illness, employer provided evidence that employee was hired on probationary basis and was never promised permanent employment, and employer presented testimony that employee did not possess skills as represented, R.C. 4112.01.

**Police officers.** State ex rel. Ohio Patrolmen's Benevolent Assn. v. Warren, 2020-Ohio-5372 | Supreme Court of Ohio | 11/25/20 Denial of police officers' petition for writ of mandamus seeking to compel city to offer promotions or exams for positions vacated by retiring upper-rank officers was not error since promotion and removal statutes, R.C. 124.44 and 124.37, do not prohibit abolishment of upper-rank positions upon retirement of their former occupants, and city ordinance abolished positions through attrition on prospective basis and prevented vacancy from occurring, eliminating positions by virtue of retirement.

**Discrimination.** Fayak v. Univ. Hosps., 2020-Ohio-5512 | 8th Appellate District | 12/3/20 In employee's gender discrimination action against former employer after she was discharged for taking unauthorized leave, summary judgment in favor of employer was not error where all events constituting employee's claims occurred prior to her last date of active employment when she began her medical leave, the shortened contractual limitations period specified in the employment contract is reasonable and enforceable, and employee was terminated because she failed to provide documentation to support continued leave of absence.

**Arbitration.** Amalgamated Transit Union, AFL-CIO, Local 697 v. Toledo Area Regional Transit Auth., 2020-Ohio-6655 | 6th Appellate District | 12/11/20 In transit union's petition against regional transit authority to compel enforcement of arbitration agreement after collective bargaining agreement (CBA) between parties expired, trial court erred in applying public policy preference favoring arbitration of negotiation to a successor CBA since union cannot maintain its action to compel arbitration under parties' separate agreement alone without reference to the parties' expired CBA or to their labor relationship, state law governs the labor relationship between parties, and R.C. 4117.14 does not mandate that the parties submit to interest arbitration.

**Arbitration.** Ashtabula v. Fraternal Order of Police, Ohio Labor Council, 2020-Ohio-6677 | 11th Appellate District | 12/14/20 In police union's grievance against city for termination of officer, trial court erred in vacating arbitration award in favor of union where arbitrator determined that the amended grievance, which corrected deficiencies, but did not change the subject matter of original grievance and was arbitrable, the arbitrator's award did not deviate from the essence of a collective bargaining agreement, and the initial grievance was timely filed.

**Discrimination.** Sullivan v. IKEA, 2020-Ohio-6667 | 12th Appellate District | 12/14/20 In age discrimination action by employee who was terminated for numerous paid time off (PTO) violations, summary judgment for employer was not error since employee failed to make a prima facie case where, inter alia, he did not establish that allegedly younger managers were treated more favorably than he was for similar PTO issues, there is no evidence that these managers dealt with the same supervisor, and there is no evidence that they were paid for the days when they were absent from work and did not submit PTO.

**Job classification.** Faulkner v. Cincinnati Civ. Serv. Comm., 2020-Ohio-6711 | 1st Appellate District | 12/16/20 In civil service employee's administrative appeal of her job classification, trial court did not err in affirming commission's determination that employee was properly classified as an administrative technician since the evidence of employee's job duties supported that classification rather than a higher classification, and earlier report finding that employee was performing duties beyond her classification did not apply since her nonconforming duties identified in earlier report were removed from employee's responsibilities.

**Noncompete agreement.** Castillo-Sang v. Christ Hosp. Cardiovascular Assocs., L.L.C., 2020-Ohio-6865 | 1st Appellate District | 12/23/20 Granting surgeon a preliminary injunction to prevent medical group from enforcing employment agreement covenant not to compete was not error since the noncompetition

restriction was greater than required to protect the medical group and posed an undue hardship on the surgeon where, inter alia, there was no evidence that the surgeon possessed confidential information that he could use to compete unfairly against the medical group or that the surgeon unfairly competed with the medical group when he worked at a different hospital, and preventing the surgeon from working at different hospital was injurious to the public.

**Employee status.** Humanus Corp. v. Dir., Ohio Dept. of Job & Family Servs., 2020-Ohio-6940 | 10th Appellate District | 12/29/20 In educational professional staffing company's appeal seeking reconsideration of determination by state department that staffer is an employer subject to unemployment compensation laws, trial court did not err in affirming commission's decision that staffer is a liable employer where, inter alia, staffer controls where and for how long educators work, how much educators are paid, and the parameters and timeframe for obtaining payment, R.C. 4141.26(D)(2).

**Picketing.** Portage Cty. Educators Assn. for Dev. Disabilities - Unit B, OEA/NEA v. State Emp. Relations Bd., 2020-Ohio-7004 | 11th Appellate District | 12/31/20 In labor relations dispute in which State Employment Relations Board (SERB) found that educators' association had committed an unfair labor practice by encouraging picketing outside private residences and place of business of county board members, trial court erred in upholding SERB's decision since R.C. 4117.12(B) regulates inducement of picketing based on content and place and is subject to strict scrutiny review, protecting individual privacy is not a compelling governmental interest, and the statute is not narrowly tailored to achieve interest by the least restrictive means.

**Non-disclosure.** Key Realty, Ltd. v. Hall, 2021-Ohio-26 | 6th Appellate District | 1/8/21 In plaintiff-real estate company's action against defendant-agent for violation of non-disclosure provision in employment agreement, summary judgment for defendant was not error where plaintiff hired defendant as an independent contractor and did not provide consideration for later agreement making defendant an at-will employee, and thus there was no binding contract between parties; because there was no binding contract, trial court erred in denying defendant summary judgment on outstanding aspects of plaintiff's breach of contract claim.

## Estate Planning, Trust and Probate Law

**Structured settlement.** In re Transfer of Structured Settlement of Anderson, 2020-Ohio-5408 | 2nd Appellate District | 11/25/20 Denial of application for approval in advance of transferor-beneficiary's transfer of payment rights under Ohio Structured Settlement Transfer Act was error since probate court failed to exercise its discretion where its decision was based solely on a local rule imposing a blanket policy prohibiting transfers in which transferor would receive less than 50% of the discounted present value of structured settlement, and the court failed to hold a hearing and did not consider any potentially unique facts and circumstances, R.C. 2323.58 et seq.

**Estate assets.** Jacobson v. Resnick, 2020-Ohio-5424 | 8th Appellate District | 11/25/20 In plaintiffs' action to declare that jewelry, which defendant claimed was a gift to him from decedent, was an asset of decedent's estate and that decedent's check payable to defendant was the result of a breach of defendant's fiduciary duty to decedent,

trial court did not err in granting summary judgment to plaintiffs since jewelry was specifically bequeathed to plaintiffs in decedent's will and defendant provided no evidence that the jewelry was an inter vivos gift to him from decedent and the check was invalid because it was not cashed or deposited prior to the decedent's death.

**Adoption.** *In re Adoption of L.J.L., 2020-Ohio-5502* | 5th Appellate District | 11/30/20 In stepfather's petition for adoption of child, trial court did not err in finding that consent of father was not required and in granting petition where father had no physical or verbal contact with child for most of child's life, mother facilitated frequent contact between child and paternal grandmother and was unlikely to have discouraged grandfather from contact, and father did not show justifiable cause for his lack of contact with child, R.C. 3107.07.

**Foreclosure.** *Nationstar Mtge., L.L.C. v. Cody, 2020-Ohio-5553* | 6th Appellate District | 12/4/20 In mortgagee's foreclosure action against executor of estate for decedent's default on mortgage agreement, summary judgment in favor of mortgagee was not error since the mortgage agreement clearly encumbered both the parcel with the home and the neighboring vacant parcel, mortgagee complied with Civ.R. 56(C) in its accounting as to amounts due and owing on the loan, and estate was provided statutory right to redemption under R.C. 2329.33.

**Adoption.** *In re Adoption of P.L.W., 2020-Ohio-5559* | 9th Appellate District | 12/7/20 In petition to adopt child where mother and her husband signed certificates for permanent surrender of child, trial court did not err in finding that biological father's consent to adoption was not required where father failed to legally establish himself as child's father and cannot be recognized as legal father pursuant to R.C. 3107.06, and he failed to register with putative father registry within the time allowed.

**Claim against estate.** *Saber Healthcare v. Hudgins, 2020-Ohio-5603* | 9th Appellate District | 12/9/20 Dismissing facility's claim against administrator of estate for unpaid balance for decedent's care was not error since facility did not present its claim in writing to administrator of estate within six months after the decedent's death, as required by R.C. 2117.06, and presenting claim to future administrator prior to his appointment, even though appointment occurred more than six months after decedent's death, did not comply with the statute; a creditor of an estate may be granted administration of an estate if one is not timely opened, R.C. 2113.06.

**Fiduciary duty.** *In re Estate of DeChellis, 2020-Ohio-5631* | 5th Appellate District | 12/9/20 Denial of heirs' motion to remove estate fiduciary, alleging that he violated R.C. 2109.24 by declining to execute directive agreed to by all beneficiaries to dismiss concealment judgments that court ordered to be included in estate assets, was not error where trial court was not willing to vacate the concealment judgments, and concealment judgments are not specific gifts or beneficial shares that can be renounced or disclaimed.

**Jurisdiction.** *In re Guardianship of Lieber, 2020-Ohio-5625* | 8th Appellate District | 12/10/20 Dismissal of application to settle claim in probate court was not error since decedent died prior to scheduled hearing on the application, and probate court lost jurisdiction in this case in which decedent's daughter had filed a fraud

claim against the estate of her mother, for whom a guardian of estate and person had been appointed, and parties had reached a proposed settlement that was set for hearing in probate court, but decedent's death intervened.

**Will.** *In re Estate of Shaffer, 2020-Ohio-6672* | Supreme Court of Ohio | 12/16/20 Denial of application to probate purported handwritten will that did not comply with R.C. 2107.03 and was submitted pursuant to R.C. 2107.24 was not error since the validity of the purported will hinged on testimony of the beneficiary, and under the voiding provision of R.C. 2107.15, which applies to wills that meet formal requirements and to wills that do not meet formal requirements, the beneficiary's interest under the purported will is eliminated as a matter of law.

**Guardianship.** *Guardianship of Naticchia, 2020-Ohio-6814* | 11th Appellate District | 12/21/20 In siblings' competing applications for appointment as guardian of their mother's person, trial court's appointment of sister rather than brother as guardian is affirmed where, inter alia, brother's claim that his mother was not advised of her statutory rights is without merit since trial court advised mother of her statutory rights and no evidence shows that mother sought to invoke her rights or that others invoked them on her behalf, so therefore she waived her statutory rights; also, the court was not required to inquire about mother's wishes as to appointment of guardian, R.C. Ch. 2111.

**Equal protection.** *In re Adoption of Y.E.F., 2020-Ohio-6785* | Supreme Court of Ohio | 12/22/20 In adoption proceeding, it was error to deny indigent biological mother appointment of counsel on reasoning that the adoption action was initiated by private parties since an indigent parent who opposes the termination of his or her parental rights in proceedings in juvenile court under R.C. Ch. 2151 has the statutory right to appointed counsel, but an indigent parent who opposes the termination of his or her parental rights in an adoption proceeding has no statutory right to appointed counsel, therefore the court declares that indigent parents are entitled to counsel in adoption proceedings in probate court as a matter of equal protection of the law under U.S. Const. amend. XIV and Ohio Const. Art. I, Sec. 2.

**Will contest.** *Ayer v. Morenz-Harbiner, 2020-Ohio-6861* | 1st Appellate District | 12/23/20 In brothers' contest of aunt's will which left the bulk of her estate to their sister, trial court did not err in granting summary judgment in favor of sister where the will was validly attested to pursuant to R.C. 2107.03, brothers' claims about sister's conduct were not evidence of undue influence, the will was executed years before aunt's alleged cognitive impairment, and aunt had expressed her desire to leave assets to sister because sister took care of her while brothers barely knew her.

**Will.** *In re L.M.W., 2020-Ohio-6856* | 9th Appellate District | 12/23/20 In case in which decedent's granddaughter filed application to admit will to probate after decedent's daughter had filed an application to admit earlier-executed will, it was not error to admit later-executed will and to overrule daughter's objections to magistrate's decision since granddaughter provided substantial evidence tending to prove that later-executed will had been attested and executed according to law, an application to admit a will to probate is not an adversary proceeding, and a challenger may contest a will's validity once it is admitted to probate.

**Trustee.** *Zarlenga v. Zarlenga, 2020-Ohio-6947* | 9th Appellate District | 12/24/20 In co-trustee's action to remove his brother as co-trustee of family trusts for breach of duties, the trial court did not err in removing brother as co-trustee and trust advisor where evidence showed that brother acted in his own interest when he allowed companies to default on agreements without issuing notices, that he withheld information from co-trustee, mother and siblings, and that brother used money from the trust and his mother's personal account for his personal use, R.C. 5807.06(B)(1).

**Discovery.** *Estate of Welch v. Taylor, 2020-Ohio-6909* | 12th Appellate District | 12/28/20 In heirs' action for conversion and unjust enrichment against executrix of their uncle's estate, summary judgment in favor of executrix was error where trial court failed to address heirs' Civ.R. 56(F) motion and precluded them from conducting and obtaining discovery prior to granting summary judgment; also, heirs sought to recover assets transferred from estate by executrix before and after uncle's death, but they did not contest validity of will, and therefore the action was not barred under R.C. 2107.76 or by res judicata.

**Child support arrearages.** *In re Estate of Anderson, 2020-Ohio-6924* | 3rd Appellate District | 12/28/20 In granddaughter's action claiming that arrearages in child support owed by her father to her deceased grandmother when grandmother cared for granddaughter were her personal property and asserting that they should be excepted from estate inventory, it was not error to include arrearages as inventory since granddaughter had no right to collect arrearages because they had been reduced to judgment prior to grandmother's death, granddaughter failed to show that grandmother did not meet her needs, and arrearages owed grandmother were assets for purposes of Medicaid recovery program, R.C. 5162.21(A)(1)(b).

**Adoption.** *In re Adoption of C.E.S., 2020-Ohio-6902* | 12th Appellate District | 12/28/20 In separate adoption cases involving mother's two children, trial court did not err in requiring mother's consent since mother's lack of contact with either child in the year immediately preceding filing of original adoption petitions was with justifiable cause where mother was forbidden by juvenile court to have contact with either child until she filed a motion establishing that her mental health issues had been successfully addressed and that resuming contact with the children would be in their best interest, R.C. 3107.07(A).

**Power of attorney.** *In re Estate of Baughman, 2020-Ohio-6928* | 5th Appellate District | 12/28/20 Ruling in favor of appellee, one son of decedent, who filed a petition for review of conduct of appellant, decedent's other son, whom she named as her power of attorney pursuant to R.C. 1337.36, was not error where court found that appellant's conduct by both act and omission was egregious and that he was completely indifferent to his responsibilities as set forth in the power of attorney, which he acknowledges that he never read.

**Will/Reconsideration.** *In re Estate of Shaffer, 2020-Ohio-6973* | Supreme Court of Ohio | 12/31/20 In reconsideration/clarification of judgment holding that R.C. 2107.15, which voids a will's devise to a witness if that witness was essential to establishing the validity of the will, applies equally to wills that meet formal requirement under R.C. 2107.03 and to wills that do not meet formal requirements, submitted under R.C. 2107.24, court of appeals' decision that the

voiding provision of R.C. 210715 does not apply to wills that do not meet formal requirements, R.C. 2107.24, is reversed, and the case is remanded to the probate court.

**Assets.** *Szokan v. Stevens, 2020-Ohio-7001 | 11th Appellate District | 12/31/20* In action brought by executor of decedent-sister's estate seeking judgment declaring bonds as estate assets and not assets co-owned with decedent's former husband, summary judgment in favor of executor was not error where, although decedent and former husband's separation agreement had no specific provision for distribution of bonds and bonds were registered with parties as co-owners, dissolution agreement provided for division and distribution of assets, bonds were in decedent's continued possession following separation, and alleged oral agreement for shared ownership is unenforceable.

**Vacation of judgment.** *In re Guardianship of Rhinehart, 2020-Ohio-7005 | 11th Appellate District | 12/31/20* In guardian's application for authority to expend funds to pay attorney fees and other expenses on behalf of his ward resulting in an order authorizing the expenditure, trial court did not err in vacating the order since the order was erroneously stamped with the signature of the probate judge without due consideration, the application sought reimbursement for legal services already rendered, attorney did not provide services in reliance on approval of fees, and attorney fees should be sought by motion to the court.

**Judgment enforcement.** *Mancz v. McHenry, 2021-Ohio-82 | 2nd Appellate District | 1/15/21* In plaintiff-fiduciary's action against defendants-decedent's daughter and her husband for failure to satisfy a prior judgment against defendants or return property they fraudulently conveyed from decedent's estate for personal use, judgment in favor of plaintiff is affirmed where daughter conveyed her interest in real estate to her husband with intent to hinder plaintiff, and the current action is not to re-litigate the prior claim but to enforce compliance with the prior judgment, and therefore it is not barred by res judicata, R.C. 2109.50.

**Claims against estate.** *In re Estate of Seiler, 2021-Ohio-115 | 9th Appellate District | 1/20/21* In hospital's creditor's claim against estate of decedent, who had been a patient at hospital, filed after patient's health benefit plan rejected coverage, trial court erred in finding that hospital's claim was a timely filed contingent claim under R.C. 2117.37 since there is no authority to support the conclusion that a private health care facility's pursuit of an internal appeals process with a private health insurer tolls the time for presenting a claim under R.C. 2117.06.

**Agricultural use value.** *Nichols v. Bixler, 2021-Ohio-129 | 5th Appellate District | 1/20/21* In a declaratory judgment action for determination of the meaning of trust language that provided for decedent's son to receive the first option to purchase the trust's real property based on the agricultural use value of the real estate, the trial court did not err in rejecting son's claim that the "agricultural use value" equaled the current agricultural use value (CAUV), R.C. 5713.31, since decedent's attorney stated that decedent intended the value to be what a willing buyer and willing seller would pay for farming for agricultural use.

## Family Law

**Magistrate's decision.** *Sheehan v. Sheehan, 2020-Ohio-5300 | 3rd Appellate District | 11/16/20* In divorce action where husband disputed imposition of child support, trial court's judgment overruling magistrate's decision and making husband's child support obligation effective a year and a half earlier is affirmed where court could overrule magistrate without finding that the magistrate abused her discretion, and although wife did not file a transcript because there was no live hearing, she complied with Civ.R. 53(D) by filing an affidavit of the evidence which provided an adequate record, App.R. 16(A)(7).

**Spousal support.** *Dingey v. Dingey, 2020-Ohio-5340 | 5th Appellate District | 11/18/20* In divorce action, trial court did not err in award of spousal support to wife where trial court specifically stated it considered all relevant factors of R.C. 3105.18 in determining temporary spousal support, both parties will operate under a net monthly deficit in light of respective monthly expenses, and simply because spousal support creates a negative cash flow for one of the parties does not necessarily lead to a finding of an abuse of discretion, Compton.

**Continuance.** *Parks v. Parks, 2020-Ohio-5356 | 2nd Appellate District | 11/20/20* In divorce action where wife filed a motion for continuance of final hearing, trial court did not err in denying her motion since wife requested the continuance at the beginning of the scheduled hearing, husband and his attorney were present and prepared to proceed, the case had been pending a long time and had been continued sua sponte several times, wife's decision to discharge counsel of two years was made the day before hearing, and she did not have a guaranteed right to counsel in a divorce proceeding.

**Prenuptial agreement.** *Fordeley v. Fordeley, 2020-Ohio-5380 | 11th Appellate District | 11/23/20* In divorce action in which husband challenged the final divorce decree, trial court erred in ruling that parties' prenuptial agreement was unenforceable where, although husband required wife to sign agreement before he would marry her, she was not rushed to make a quick decision, her pregnancy did not constitute duress, she met with counsel and signed a waiver saying she understood the terms of the agreement and was executing it against counsel's advice, and case is remanded for trial court to consider and rule on, inter alia, wife's other arguments regarding the validity of the prenuptial agreement.

**Visitation.** *A.R.C. v. D.J.S., 2020-Ohio-5403 | 10th Appellate District | 11/24/20* In divorce action where husband sought modification of visitation order, trial court's order of supervised visitation for husband is affirmed since husband admitted only partly complying with conditions for unsupervised visitation, he did not timely object in trial court to magistrate's decision, he did not provide transcripts or exhibits to support his assertions that he fulfilled conditions of visitation order, R.C. 3109.051, and the regularity of proceedings below is presumed.

**Civil protection order.** *E.V. v. R.V., 2020-Ohio-5414 | 9th Appellate District | 11/25/20* Issuance of a civil stalking protection order against appellant was error since appellee failed to demonstrate a pattern of conduct where, inter alia, appellee's exhibit contained very poor quality images of text messages sent to a third party, appellee did not provide any testimony regarding the messages,

and there is no evidence to show who was involved in the text conversations or when the conversations occurred, R.C. 2903.211.

**Property division.** *Dayal v. Lakshmipathy, 2020-Ohio-5441 | 6th Appellate District | 11/25/20* In divorce action in which wife disputed classification of assets held in an irrevocable trust, trial court erred in finding trust assets were marital property where, although the trust was initially funded with assets acquired during the course of marriage, husband relinquished all interest in the assets at time of transfer into the trust, as evidenced by the clear language of the trust, and thus husband possessed requisite donative intent to make an inter vivos gift to wife, R.C. 3105.171.

**Spousal support.** *Copley v. Copley, 2020-Ohio-6669 | 4th Appellate District | 12/2/20* In divorce action, trial court did not abuse its discretion in awarding wife temporary spousal support during pendency of divorce proceeding where court was not required to state that it considered the R.C. 3105.18(C)(1) factors or its rationale for temporary award, and court's award was reasonable, given wife's lack of work history and expenses; court did err in award of indefinite spousal support where once the court decided to consider the parties' living expenses, it acted unreasonably when it disregarded many expenses to which husband testified.

**Property division.** *Sangeri v. Yerra, 2020-Ohio-5489 | 10th Appellate District | 12/3/20* In husband's appeal of final divorce decree, trial court did not err in its classification and division of marital property where evidence indicated that husband wanted wife to be dependent on him and that he maintained financial control, husband tried to renew his motion for a de facto termination date of the marriage, which was already denied, credible evidence showed that husband willfully or recklessly depleted funds, and award of attorney fees to wife was within the court's discretion.

**Tax liability.** *Halliwell v. Halliwell, 2020-Ohio-5548 | 6th Appellate District | 12/4/20* In divorce action where wife sought reimbursement from husband for tax liability, trial court erred in ordering husband to reimburse wife money that would have been owed to her by the taxing agencies but for husband's 401(k) withdrawal since the decree required reimbursement to wife only of her payment of additional tax liability resulting from husband's early 401(k) withdrawal.

**Jurisdiction.** *Blankenship v. Howard, 2020-Ohio-5532 | 5th Appellate District | 12/2/20* Denial of father's motion for new trial after trial court issued civil protection order in favor of mother and children was not error where out-of-state father's claim that trial court lacked jurisdiction on reasoning that it did not follow guidelines of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is without merit since trial court had jurisdiction to issue the civil protection order pursuant to R.C. 3113.31(A)(2) and (B), and any failure to comply with the UCCJEA should have been challenged in a direct appeal which father did not do.

**Spousal support.** *Abbott v. Abbott, 2020-Ohio-5599 | 5th Appellate District | 12/8/20* In divorce action, trial court erred in denying husband's motion to modify spousal support since the trial court made a mathematical miscalculation related to husband's income, and the miscalculation was of sufficient size to merit reversal of the trial court's decision.

**Jurisdiction.** *C.S.J. v. S.E.J.*, 2020-Ohio-5627 | 5th Appellate District | 12/10/20 In divorce action in which trial court imposed costs on each party for family evaluation services (FES), trial court did not lack jurisdiction to deny husband's motion to vacate the order, even though there was a pending application for reconsideration of court of appeals' earlier decision in the case, since husband did not file a stay in the action and the trial court retained jurisdiction to take action in aid of execution of its order for FES costs.

**Receiver.** *Prewitt v. Prewitt*, 2020-Ohio-6710 | 9th Appellate District | 12/16/20 In divorce action where husband sought appointment of receiver over wife's real estate businesses, trial court erred in appointing receiver since husband did not submit sufficient evidence to establish that appointment was necessary to preserve his rights, and he did not present evidence that any property owned by wife through her business was in danger of being lost or materially injured pursuant to R.C. 2735.01(A).

**Property division.** *Landis v. Landis*, 2020-Ohio-6768 | 2nd Appellate District | 12/18/20 In divorce action where husband challenged valuations of business and property and assignment of credit card debt, trial court erred in its classification of all corporate credit card debt as business debt, and although the assignment to husband of the entirety of the debt may be appropriate under the circumstances of this case, a cursory review of records reveals non-business charges on the corporate cards.

**Custody.** *Kelley v. Kelley*, 2020-Ohio-6778 | 6th Appellate District | 12/18/20 In divorce action in which the court modified the parties' parenting time schedule, trial court's schedule that ordered everything father wanted except midweek overnight visits, which were instead ordered when school was not in session, was not unreasonable, arbitrary or unconscionable and is affirmed, R.C. 3109.051.

**Collateral attack.** *Lanza v. Lanza*, 2020-Ohio-6805 | 11th Appellate District | 12/21/20 Dismissal under Civ.R. 12(B)(6) of husband's action against wife in general division of common pleas court, alleging fraud and abuse of process, was not error since husband was attempting to relitigate the same issues which he could or should have litigated in parties' divorce case; husband's action is an improper collateral attack on the divorce decree, over which the domestic relations division has exclusive statutory jurisdiction, and husband's only potential remedy is a Civ.R. 60(B) motion in the domestic relations division.

**Property division.** *Jones v. Jones*, 2020-Ohio-6851 | 2nd Appellate District | 12/23/20 In divorce action in which husband disputed division of property, trial court erred in determining that proceeds of civil action settlement received by wife were her separate property since the settlement agreement was between husband and wife and the employer-county and not an agreement between husband and wife, extrinsic evidence must be considered in addition to the agreement, and wife failed to show that settlement proceeds were for her own physical sickness and not marital property, R.C. 3105.171.

**Custody/Adoption.** *Davis v. Nathaniel*, 2020-Ohio-6858 | 9th Appellate District | 12/23/20 In aunt's action seeking custody and shared parenting of her deceased sister's children who had been adopted by a third sister and husband,

trial court erred in determining that aunt had standing to pursue companionship with children pursuant to R.C. 3109.11 where order allowing aunt to interact with children affects a substantial right of adoptive parents by mandating their children's association with others against their wishes, and final decree of adoption supersedes aunt's familial relationship under R.C. 3107.15 for legal purposes, although she remains their aunt.

**Contempt.** *Miller v. Miller*, 2020-Ohio-6914 | 11th Appellate District | 12/28/20 In divorce action where wife filed motion to hold husband in contempt for failure to make child support payments, the trial court erred in denying motion on reasoning that husband's payments were current at the time of the hearing since husband could still be held in contempt for failing to timely pay his monthly child support obligations when they were due.

**Custody.** *Suwareh v. Nwankwo*, 2020-Ohio-6899 | 12th Appellate District | 12/28/20 In divorce action, trial court's prohibition of release of children from school to celebrate father's religious holidays did not impinge on father's fundamental right to raise his children as he sees fit since the court properly afforded father additional time in the evening to celebrate his religious holidays with his children, father will have the benefit of school break periods if his religious holidays occur during those periods, and children are also not released from school to celebrate mother's religious holidays.

**Property division.** *Swick v. Swick*, 2020-Ohio-6884 | 9th Appellate District | 12/28/20 In divorce action in which husband objected to classification of marital residence, trial court erred in not granting husband a separate property interest in residence and in ordering it sold since husband purchased the house years before the marriage, no evidence shows that the house appreciated after marriage in spite of improvements to which wife contributed, and husband's interest is traceable even with commingling with other property when house was used as collateral for line of credit with wife, R.C. 3105.171.

**Support.** *Suppan v. Suppan*, 2020-Ohio-6883 | 9th Appellate District | 12/28/20 In divorce action in which wife disputed the calculation of husband's income for purposes of child and spousal support, trial court erred in its calculation since his corporate distributions were incorrectly characterized as bonuses and were considered in the R.C. 3119.05(D) calculation, and the distributions should have been evaluated without being limited by statute's constraints.

**Property division.** *Carl v. Carl*, 2020-Ohio-6906 | 12th Appellate District | 12/28/20 In divorce action in which the value of personal property was ordered to be divided pursuant to an auction, trial court did not err in declining to find husband in contempt in response to wife's claim that husband did not provide all his property for auction since auctioneers testified that both parties were cooperative in facilitating the auction and that husband allowed the auctioneers to tour his property to photograph and to value pieces of property that were ordered to be sold.

**Custody.** *Schorr v. Schorr*, 2020-Ohio-6936 | 10th Appellate District | 12/29/20 In divorce action in which husband sought termination of shared parenting plan, trial court did not err in declining to terminate plan, in modifying the plan pursuant to the recommendation of the guardian ad litem, initially applying R.C. 3109.04(E)(2)(c), and after

deciding against terminating the shared-parenting plan, applying R.C. 3109.04(E)(2)(b).

**Property division.** *Boolchand v. Boolchand*, 2020-Ohio-6951 | 1st Appellate District | 12/30/20 In divorce action where husband challenged division of property, trial court did not err in finding that husband's defined contribution account was entirely marital property where R.C. 3105.171 does not require the use of coverture fraction to determine marital portion of the account, the value of the account was not based on years of employment so use of coverture fraction would be unnecessary, and husband failed to show that the account contained premarital, separate property.

**Contempt.** *Dimalanta v. Dimalanta*, 2020-Ohio-6992 | 8th Appellate District | 12/31/20 In divorce action in which wife filed motion to show cause for husband's failure to pay temporary support, trial court did not err in finding husband in civil contempt where husband failed to comply with two orders, and although it is not clear whether the court adopted magistrate's finding of contempt as a first offense to allow for a second offense during a current proceeding, the judgment entry provides for two discrete contempt findings which are punishable as first offenses, R.C. 2705.05(A).

**Spousal support/Property division.** *Theriot v. Hetrick*, 2020-Ohio-6995 | 8th Appellate District | 12/31/20 In divorce action, trial court erred in awarding husband spousal support since he did not request it in his complaint, R.C. 3105.18(B) specifically states that to receive spousal support a party must request it, the request must put the other party on notice, and based on the pleadings, wife had no notice that husband was planning to request spousal support at trial; also, R.C. 3105.171(B) requires the court to divide property in divorce proceedings, and no party needs to request it.

**Property division.** *Fernando v. Fernando*, 2020-Ohio-7008 | 10th Appellate District | 12/31/20 In divorce action in which dispute over rental income remained after remand, trial court erred in reducing husband's share of rental income by two separate amounts based on perceived circumstances where reduction for the first year was unsupported by evidence because husband was removed and never made withdrawals from joint account in which income was deposited, and reduction for the second year was unsupported because rental proceeds were not used for benefit of both parties and husband had contributed more to marital expenses while wife was unemployed.

**Property division.** *Johnson v. Johnson*, 2021-Ohio-16 | 2nd Appellate District | 12/31/20 In divorce action in which wife disputed division of property and denial of spousal support, trial court erred in declining to award wife a portion of husband's public pension fund where, although wife's objection lacked specificity, the judgment failed to recognize the existence of the asset, the asset is marital property, and even if no evidence of the value of the asset was presented, future payment of benefits is statutorily predictable, Civ.R. 53(D) and R.C. 3105.171.

**Custody.** *Hill v. French*, 2021-Ohio-24 | 6th Appellate District | 1/8/21 In divorce action in which wife disputed termination of shared parenting plan, the trial court did not err in designating husband as residential parent for two of three children where wife engaged in pattern of behavior that alienated children from father and failed to honor court-ordered visitation schedule, split parenting decision was warranted due to interactions between younger children and older

sibling, and attorney fees were appropriately awarded to father, but case is remanded to determine the amount, R.C. 3105.73(B) and 3109.04.

**Custody.** *Facemyer v. Facemyer, 2021-Ohio-48* | 9th Appellate District | 1/12/21 In divorce action where husband disputed termination of shared parenting plan, the trial court did not err in finding that termination of plan and assignment of wife as residential parent were in the best interests of the children where parties were unable to cooperate and make joint decisions regarding children, they were unable to share the same space, termination of plan gave wife decision-making authority and eliminated the parties' power struggle, and husband failed to even consult with wife before making decisions regarding what was best for children, R.C. 3109.04.

**Child support.** *J.E.M. v. D.N.M., 2021-Ohio-67* | 8th Appellate District | 1/14/21 In divorce action where husband disputed modification of wife's child support obligation, trial court did not err in granting wife's motion to modify where support worksheets reflected a differential larger than 10 percent and indicated a change of circumstances to justify modification of existing support order pursuant to R.C. 3119.79, and magistrate correctly applied amended law to support obligations incurred after date of amendment.

**Property division.** *Jenkins v. Jenkins, 2021-Ohio-153* | 4th Appellate District | 1/14/21 In divorce action involving husband who participated in public employee retirement system, sustained a work-ending injury, and received disability benefits, trial court did not err in requiring husband to elect a post-retirement joint and survivor annuity that would protect wife's right to receive benefits if husband predeceased her, and the court properly found that husband's disability benefit transmuted into a retirement benefit at retirement age.

**Property division.** *Murphy v. Murphy, 2021-Ohio-101* | 3rd Appellate District | 1/19/21 In divorce action involving division of husband's public employee retirement pension, trial court erred in sua sponte vacating the DOPO (division of property order), which deviated from the court's order dividing the pension, since the DOPO was voidable, rather than void, and the court also erred in sua sponte vacating the original and amended QDRO's (qualified domestic relations orders) since they were consistent with the court's order.

**Appeal.** *DeGrant v. DeGrant, 2021-Ohio-107* | 11th Appellate District | 1/19/21 In custody dispute, appeal of denial of mother's motion for sanctions against father is dismissed for lack of a final appealable order since the order does not affect mother's substantial right to parent her child, but rather her right to expenses and reasonable attorney fees for alleged violation of Civ.R. 11; also, an interlocutory order that affects a substantial right in a special proceeding, such as divorce, must contain the "no just cause for delay" language required by Civ.R. 54(B) to be appealable, and that language was not included in the trial court's order, R.C. 2505.02(B)(2).

**Custody.** *Bonifield v. Bonifield, 2021-Ohio-95* | 12th Appellate District | 1/19/21 In divorce action where wife disputed allocation of parenting time, trial court did not err in granting parties nearly equal parenting time and designating husband as child's residential parent for school purposes since it is in child's best interest to attend public school in district where husband resides and not to be home schooled by wife because wife's plan to home school child at her place of employment

as a dog groomer did not consider issues of child's fragile health or wife's lack of formal training, R.C. 3109.04.

**Property division.** *Toki v. Toki, 2021-Ohio-128* | 5th Appellate District | 1/21/21 In divorce action in which trial court ordered wife to receive a payment from husband's state employee retirement account and husband paid her only a portion of the full amount, trial court erred in awarding wife interest only from the date of husband's retirement until the end of that year rather than from the date of the divorce decree until the date of retirement.

**Property division.** *Speece v. Speece, 2021-Ohio-170* | 11th Appellate District | 1/21/21 In divorce action, trial court did not err in dividing marital property in light of the finding of husband's financial misconduct since it was within the court's discretion to allocate assets unequally and in a manner it deemed to be most equitable, R.C. 3105.171(E)(4), resulting in award of half of funds transferred from the joint bank accounts to the wife and in the determination that the wife should receive 75 percent of the value of certain marital assets and 50 percent of other marital assets.

**Civil protection order.** *Steele v. Steele, 2021-Ohio-148* | 2nd Appellate District | 1/21/21 Issuance of a civil protection order against husband for the protection of the parties' minor child is affirmed since husband failed to file objections in the trial court, as required by Civ.R. 65.1, and language in a protection order stating that the order is final and appealable does not relieve an appellant of responsibility to file objections.

**Custody.** *B.S. v. M.M., 2021-Ohio-176* | 5th Appellate District | 1/25/21 In custody dispute, trial court did not err in granting wife's motion for reallocation of parental rights since there had been a substantial change of circumstances based on child's age and wishes to live with her mother, and reallocation was in the best interest of the child where, inter alia, child wanted to go to school in school district in which mother lived, and child's wishes mirrored recommendations of the guardian ad litem, R.C. 3109.04.

**Contempt.** *Mohler v. Mohler, 2021-Ohio-175* | 5th Appellate District | 1/26/21 In divorce action, trial court did not err in finding that husband was in contempt for failing to comply with spousal and child support orders and that husband did not fulfill purge conditions where his defense that child support agency intercepted his tax refunds is meritless since he was ordered to make monthly payments and a lump-sum payment is not the same as a monthly payment, and even after his support obligations were credited with the tax refunds, he still had an arrearage.

**Child support.** *Hess v. Ugorec, 2021-Ohio-189* | 9th Appellate District | 1/27/21 In child support dispute in which trial court adopted child support enforcement agency's administrative findings and recommendation and entered judgment terminating father's child support obligation, trial court erred in subsequently reinstating the child support order since it did not retain jurisdiction to continue, modify or reinstate child support after child's emancipation, and the judgment reinstating child support is vacated; there is no evidence to show that the child is a Castle child under a disability and unable to support herself, R.C. 3119.86.

**Spousal support.** *Alkire v. Alkire, 2021-Ohio-186* | 9th Appellate District | 1/27/21 In divorce action, trial court retained jurisdiction over spousal support amount, and the court did not err in

reducing husband's support obligation based on a decrease in his income, which constituted a sufficient change in circumstances when compared to his income at time of court's previous spousal support order, and the court properly did not compare his current income with his income at the time of the divorce decree, R.C. 3105.18.

## Government/Administrative

**Employment.** *Gearhart v. Union Twp. Bd. of Trustees, 2020-Ohio-5675* | 4th Appellate District | 11/25/20 In firefighter's appeal of township board of trustees' decision to terminate his employment, trial court did not err in affirming board's decision where firefighter failed to object to admission of unsworn testimony at administrative hearing and thus forfeited the right to raise the issue on appeal, and he did not introduce additional evidence or call witnesses as allowed under R.C. 2506.03(A); also discussed, R.C. 733.35.

**Immunity.** *Rose v. Whitney, 2020-Ohio-5358* | 2nd Appellate District | 11/20/20 In physician's malpractice action asserting that he was misdiagnosed as having alcohol dependence by examiner during an examination ordered by state medical board where physician re-filed complaint as a fraud claim following dismissal of original complaint, trial court did not err in dismissing fraud complaint for lack of subject-matter jurisdiction since R.C. 9.86 provides that immunity determination must be made by court of claims, and even if examiner acted fraudulently, the court of claims has exclusive jurisdiction pursuant to R.C. 2743.02(F), Civ.R. 12(B)(1).

**Building code.** *Powlette v. Dayton Bd. of Bldg. Appeals, 2020-Ohio-5357* | 2nd Appellate District | 11/20/20 In property owner's administrative appeal of building regulation division's stop work order on his barn, trial court did not err in upholding board of building appeals' decision that the barn was used for both agricultural and public assembly occupancy purposes and did not qualify as an agriculturally exempt building since property owner was using the barn to host weddings in violation of fire and life safety regulations and its use as wedding venue did not constitute agritourism, R.C. 3781.06(B)(1).

**Immunity.** *Brown v. Cincinnati, 2020-Ohio-5418* | 1st Appellate District | 11/25/20 In city's appeal of denial in part of its motion for summary judgment in response to plaintiff's action for replevin and conversion to recover for items removed from his house pursuant to an investigation for charges on which plaintiff was acquitted, appeal regarding the merits of plaintiff's claim is dismissed since denial of a motion for summary judgment is generally not a final appealable order, but appeal on issue of immunity is an exception and can be appealed; R.C. Ch. 2744 is not a defense to claims such as replevin, but it is a defense to the conversion claim for damages, and the trial court erred in declining to grant summary judgment to the city on that claim.

**Home rule.** *Buckeye Firearms Found., Inc. v. Cincinnati, 2020-Ohio-5422* | 1st Appellate District | 11/25/20 In plaintiffs-firearms organizations' action seeking a declaratory judgment that city ordinance banning a device designed to accelerate the rate of fire of a firearm conflicted with state law, trial court did not err in granting summary judgment to plaintiffs on reasoning that the ordinance conflicted with R.C. 9.68 and that the city exceeded its home-rule powers where nothing in the text of R.C. 9.68 supports the city's view that firearm components are limited to those parts that are standard or original to the firearm.

**Immunity.** Goebel v. Minster, 2020-Ohio-5467 | 3rd Appellate District | 11/30/20 In landowners' negligence action against village for damage caused by sewage flood in homes following destruction of an old sewer system, trial court did not err in denying village's motion to dismiss where destruction of sewer system is a proprietary function and exception to political subdivision immunity under R.C. 2744.02(B), construction of a trench box does not reinstate immunity under R.C. 2744.03(A)(5), and if complaint is believed, village acted with conscious disregard of or indifference to obvious risk of harm to property of others.

**Annexation.** State ex rel. Young v. Ducro, 2020-Ohio-5471 | 11th Appellate District | 11/30/20 Relators'-property owners' petition for writ of mandamus to compel respondents-members of board of county commissioners to grant relators expedited type-2 annexation petition for property on which relators are building a single-family home is granted since R.C. 709.023(E)(6) does not require commissioners to deny an expedited type-2 annexation petition when a municipal corporation has resolved that it does not intend to provide services to the territory proposed to be annexed, and commissioners should not use services issue as a justification to deny annexation.

**Appropriation.** State ex rel. AWMS Water Solutions, L.L.C. v. Mertz, 2020-Ohio-5482 | Supreme Court of Ohio | 12/2/20 In case in which state suspended relators' operation of saltwater-injection oil well on concerns that the well may have caused seismic activity, denial of relators' petition for writ of mandamus to compel state to commence appropriations proceedings, claiming that state eliminated the economic viability of relators' property, was error since there was a genuine issue of material fact concerning whether the state's suspension of operations at the well constituted a total or partial taking by depriving relators of economically beneficial use of its leasehold.

**Immunity.** Frank v. S.W. Ohio Regional Transit Auth., 2020-Ohio-5497 | 1st Appellate District | 12/2/20 In negligence action arising from accident in which decedent and pedestrian were hit by bus driven by employee of regional transit authority, trial court did not err in denying driver's and authority's motion for summary judgment, arguing governmental immunity, since there is a fact issue as to whether driver was reckless where he admitted he did not adhere to mandatory turn procedures, driver was acting within his scope of employment with authority at the time of the accident, and authority did not present any meaningful argument to support contention that its actions were a proper exercise of discretion, R.C. Ch. 2744.

**Street maintenance.** State ex rel. Delta Lookout, L.L.C. v. Cincinnati, 2020-Ohio-5486 | Supreme Court of Ohio | 12/3/20 Denial of petition for writ of mandamus seeking to compel city to maintain and repair streets within city boundary on reasoning that the streets were never dedicated to the public by statute or through common law was error since the Platting Commission Act of 1871 furnished a means of achieving a statutory dedication and a map compiled at the direction of the Platting Commission shows that the streets were the subject of a statutory dedication, so the case is remanded for petitioner to show that it has a clear legal right to the relief requested and that the city has a clear legal duty to perform the requested acts.

**Zoning.** Powell v. Warren Cty. Bd. of Comms., 2020-Ohio-5570 | 12th Appellate District | 12/7/20 In taxpayers' action seeking declaratory judgment that a planned-unit development violated the county's zoning resolution, summary judgment for board of commissioners was error where the board did not adopt the ad hoc planned-unit development procedure authorized by R.C. 303.022(B) in its zoning resolution, and trial court improperly held that the zoning code's density and open space standards were inapplicable to the planned-unit development.

**Court budget.** State ex rel. Williams-Byers v. S. Euclid, 2020-Ohio-5534 | Supreme Court of Ohio | 12/8/20 In court budget dispute in which court issued an order commanding city to pay full amount requested, petition for writ of mandamus to compel city to comply with funding order is denied where court relied on inherent authority to support claim, but R.C. Ch. 1901 provides guidance on budget issues, giving the legislative authority discretion to determine funding for a particular budget item, the city may refuse to fund even reasonable requests by the court, and the court did not meet the burden to establish that city's allocation constitutes an abuse of discretion.

**Immunity.** Cool v. Brown-Clark, 2020-Ohio-6968 | 7th Appellate District | 12/11/20 In plaintiff's-bail bondsman's action against city alleging that clerk of court intentionally and maliciously refused to register him as bail bondsman in municipal court, trial court erred in denying city's motion for summary judgment since R.C. 2744.03(A)(6) does not apply because claim was brought against clerk of court only in her official capacity, plaintiff's claims that clerk harbored personal animosity toward him are not relevant under R.C. 2744.02, and plaintiff raised no allegations to overcome city's political subdivision immunity.

**Zoning.** Marra v. Auburn Twp. Zoning Inspector, 2020-Ohio-6678 | 11th Appellate District | 12/14/20 In zoning dispute where inspector found that homeowner violated zoning regulations when she rented her residence to temporary groups on a regular basis and board of zoning appeals denied homeowner's appeal, trial court did not err in affirming board's decision since listing a home for transient use of small or large groups when owner remains in home does not qualify as a single-family dwelling use as required by zoning, and online information corroborated by neighbors showed the owner used her home for large groups of adults.

**Immunity.** Plush v. Cincinnati, 2020-Ohio-6713 | 1st Appellate District | 12/16/20 In plaintiffs' wrongful death action against city after their son died waiting for emergency services to arrive, trial court erred in denying defendants' motion to dismiss as to city and its employees in official capacities where, although R.C. 128.32 allows for political subdivision liability for misconduct in developing a 9-1-1 system, it does not impose liability for misconduct in operation of system, and the physical-defect exception to immunity does not apply because son's death occurred after the conclusion of second 9-1-1 call on private property, R.C. 2744.02.

**Zoning.** ProTerra, Inc. v. Cleveland Bd. of Zoning Appeals, 2020-Ohio-6739 | 8th Appellate District | 12/17/20 Board of zoning appeals' (BZA) denial of property owner's application for certificate of occupancy due to three zoning violations and denial of variances, affirmed by trial court, is reversed under R.C. Ch. 2506 limited review since the BZA erred when it applied the wrong legal standard and failed to consider Duncan

factors and since trial court affirmed BZA's resolution without sufficient detail to allow review to determine whether trial court had analyzed the evidence under the "practical difficulty" standard.

**Zoning.** AMG Truck Properties, L.L.C. v. Granger Twp. Bd. of Zoning Appeals, 2020-Ohio-6789 | 9th Appellate District | 12/21/20 In trucking equipment company's application seeking zoning board's approval for conditional use of land, trial court did not err in affirming board's decision denying application where any alleged error by the common pleas court in using parts of the board's brief in its decision was harmless, and the court complied with R.C. 2506.04 in finding that trucking company did not meet requirements of township's zoning resolution, including not complying with the 100-foot setback, the outdoor storage screening requirements and the paving requirements.

**Zoning.** Cincinnati v. Fourth Natl. Realty, L.L.C., 2020-Ohio-6802 | Supreme Court of Ohio | 12/22/20 In city's action seeking removal of a billboard sign where advertiser filed a counterclaim for declaratory judgment that city ordinance prohibiting offsite advertising of services not sold on premises without city's prior approval is unconstitutional, denial of city's motion for summary judgment asserting that the court lacked jurisdiction over the counterclaim was not error where advertiser's failure to serve attorney general at inception of action did not divest trial court of its subject-matter jurisdiction, and because there is no statutory language dictating timing of service on attorney general, requirements for challenge of ordinance were met, R.C. 2721.12(A).

**Immunity.** Abdou v. Ohio Dept. of Agriculture, 2020-Ohio-6937 | 10th Appellate District | 12/29/20 In negligence action in court of claims against state department by plaintiff who was injured when he was traversing an inflatable obstacle course which was inspected by state department, trial court did not err in granting state department a summary judgment on reasoning that governmental immunity applied since the actions in this case are explicitly defined as public duties whether applied to employees in licensing and inspecting the obstacle course at issue or the acts or omissions in creating or implementing policies and protocols governing licensing and inspecting, and no special relationship existed between state department and plaintiff, R.C. 2743.01(E)(1)(a) and 2743.02(A)(3).

**Immunity.** O'Brien v. Great Parks of Hamilton Cty., 2020-Ohio-6949 | 1st Appellate District | 12/30/20 In plaintiff's negligence action against defendant-county golf course for injuries sustained when he was hit by a lawnmower while golfing, summary judgment in favor of defendant based on political subdivision immunity was not error where the physical-defect exception to immunity does not apply because the lawnmower did not have mechanical problems before the accident, the lawnmower driver's use of the lawnmower was not a physical defect, and plaintiff failed to raise the motor-vehicle exception to immunity prior to appeal, R.C. 2744.02(A)(1).

**Recovery of funds/Limitations.** Barton v. Cuyahoga Cty., 2020-Ohio-6994 | 8th Appellate District | 12/31/20 In action by plaintiffs-attorneys and client against county for unlawful retention of funds forfeited in underlying criminal prosecution which plaintiffs sought to recover in satisfaction of their civil judgment against underlying defendants, summary judgment in favor of county was not error where plaintiffs had no private right of action

to sue county to recover funds, at time of forfeiture plaintiffs had no lawful interest in funds and county had no duty to specifically notify them, and plaintiffs failed to assert interest in funds within statutory period, R.C. 2923.34 and 2981.06.

**Service charges.** Steeplechase Village, Ltd. v. Columbus, 2020-Ohio-7012 | 10th Appellate District | 12/31/20 In plaintiff's-residential community owner's action against city seeking declaratory judgment related to stormwater charges, summary judgment for city was not error since city code clearly states that stormwater charges are based on amount of impervious area (paved or otherwise covered) for each parcel of property, the fact that maintenance to stormwater channels had not been necessary is not evidence that the cost of service is zero, and plaintiff failed to show that city code permitted city to disproportionately charge plaintiff.

## Insurance

**Excess.** William Powell Co. v. OneBeacon Ins. Co., 2020-Ohio-5325 | 1st Appellate District | 11/18/20 In insured-manufacturer's action seeking indemnification under insurance policies for asbestos claims, trial court erred in finding insurers' excess policies supported horizontal rather than vertical exhaustion where insurers contracted to indemnify insured for its ultimate net loss in excess of limits of underlying insurance, no contractual language required exhaustion of policies issued in years preceding or following those for which insurers sold excess policies, and insurers are only liable for occurrences during coverage period.

**Commercial general.** Al Neyer, L.L.C. v. Westfield Ins. Co., 2020-Ohio-5417 | 1st Appellate District | 11/25/20 In insured-demolition company's action against insurer seeking coverage under commercial general liability policy so insured could be indemnified for settlement of claim arising from insured's interior demolition of restaurant in anticipation of converting it to a medical facility where the restaurant was the subject of a lease dispute and there was no signed contract regarding medical facility, it was error to grant summary judgment to the insured since proceeding with demolition without a contract in place was not an accidental occurrence within the meaning of the policy.

**Environmental remediation.** Garrett Well, L.L.C. v. Frick-Gallagher Mfg. Co., 2021-Ohio-160 | 4th Appellate District | 1/14/201 In action by plaintiff against insurer of defunct insured-owner of abandoned industrial property to recover remediation services costs that were awarded to plaintiff in underlying action against insured, it was not error to rule for insurer on reasoning that the owned property exclusion from coverage for property damage to "property owned or occupied by or rented to the insured" barred plaintiff's recovery since, inter alia, there was no evidence of contamination beyond insured's premises and claim that the owned property exclusion does not apply to potential or threatened harm to third-party property is meritless.

## Juvenile Law

**Custody.** In re L.R., 2020-Ohio-5299 | 9th Appellate District | 11/16/20 Award of permanent custody of children to agency was not error where, although mother had relocated to another state and requested transfer of the case pursuant to R.C. 3127.21(B), the children were in temporary custody of agency and did not reside with mother, agency made reasonable efforts to reunify mother

with children, mother did not work on case plan goals or see children regularly, and children were bonded with foster family and expressed preference to remain there, R.C. 2151.414.

**Custody.** In re J.C.A., 2020-Ohio-5336 | 11th Appellate District | 11/19/20 Award of permanent custody of children to agency was not error where mother missed many sessions of her intensive outpatient drug treatment program and she failed to actively participate in those she attended, she did not work on anger issues to help her when children misbehaved, and she was inconsistent in visiting children, while children are strongly bonded with caregivers, R.C. 2151.414.

**Custody.** In re J.A., 2020-Ohio-5354 | 2nd Appellate District | 11/20/20 Award of permanent custody of dependent children to agency was not error where agency in another state found maternal grandfather to be unsuitable for placement of children since grandfather's wife had been investigated for child abuse, mother was incarcerated for child endangerment and felonious assault in relation to children, and children were together and doing well in foster care, R.C. 2151.414 and 5103.20.

**Delinquency.** In re T.B., 2020-Ohio-5389 | 11th Appellate District | 11/23/20 In adjudication of juvenile as delinquent for adult sex offenses and commitment to department of youth services, trial court erred by designating juvenile a Tier II juvenile offender registrant in the dispositional order committing him to the department where the offenses were juvenile's first delinquency adjudications, and the conditions of R.C. 2152.86 do not apply to this offense, R.C. 2152.83(A)(1).

**Contempt.** In re D.S.S., 2020-Ohio-5386 | 11th Appellate District | 11/23/20 In delinquency proceeding for adult sex offense, trial court erred in finding indirect criminal contempt for failure of employee of facility where juvenile was believed to have received counseling services to obey subpoena served by guardian ad litem for the alleged juvenile victim since the court made no finding of guilt beyond a reasonable doubt and did not address the element of intent where no testimony or evidence was presented to show that appellant acted intentionally.

**Contempt.** In re D.S.S., 2020-Ohio-5387 | 11th Appellate District | 11/23/20 In delinquency proceeding for adult sex offense, trial court erred in finding indirect criminal contempt for failure of employee of facility where juvenile was believed to have received counseling services to obey subpoena served by guardian ad litem for the alleged juvenile victim since the court made no finding of guilt beyond a reasonable doubt and did not address the element of intent where no testimony or evidence was presented to show that appellant acted intentionally.

**Bindover.** State v. Stephens, 2020-Ohio-5395 | 12th Appellate District | 11/23/20 In conviction of 16 year-old juvenile by plea to robbery following bindover on aggravated robbery charges and subsequent conviction of robbery, juvenile court did not err in determining on reverse bindover that juvenile was not amenable to juvenile court sanctions, R.C. 2152.121(B), where the court balanced the factors involved and gave weight to the seriousness of the offense, including that juvenile held a firearm to victim's head and that victim, or someone else, could have been seriously injured or died during the offense.

**Contempt.** In re D.S.S., 2020-Ohio-5388 | 11th Appellate District | 11/23/20 In juvenile delinquency proceeding for adult sex offense, trial court erred in finding indirect criminal contempt for failure of employee of facility, where juvenile was believed to have received counseling services, to obey subpoena served by the guardian ad litem for the alleged minor victim since the court made no finding of guilt beyond a reasonable doubt and did not address the element of intent where no testimony or evidence was presented to show that appellant acted intentionally.

**Custody.** In re C.K., 2020-Ohio-5437 | 5th Appellate District | 11/24/20 Award of permanent custody of dependent child to agency was not error where, inter alia, father failed to attend scheduled appointments for substance abuse treatment, failed without excuse to participate in drug screenings, provided no documentation to corroborate his claims of employment and did not regularly visit child, while maternal aunt with whom child was placed sought to adopt child and her sibling, R.C. 2151.414.

**Custody.** In re C.W., 2020-Ohio-5438 | 5th Appellate District | 11/24/20 Award by first county trial court of legal custody of children to paternal aunt is affirmed, even though second county court had jurisdiction when mother moved to second county, since agency in first county filed complaint for dependency, causing the temporary custody order issued by second county court to be terminated as a matter of law, and considering the purpose of R.C. Ch. 2151 to protect the children and to provide them with a legally secure placement which was effectuated by granting juvenile courts wide discretion, first county court did not err in considering the dependency complaint filed in it.

**Dependency.** In re L.W., 2020-Ohio-5439 | 5th Appellate District | 11/24/20 Children's adjudication of dependency was not error where mother had been the subject of numerous investigations by agency for substance abuse, physical abuse, criminal issues and lack of parenting skills and/or other personal problems, and she stipulated to a dependency finding, R.C. 2151.28(L).

**Relief from judgment.** In re L.S., 2020-Ohio-5516 | 4th Appellate District | 11/24/20 Denying mother's motion for relief from judgment adjudicating child as dependent was not error since the motion made some of the same allegations as a prior motion from which no appeal was taken, so those claims are barred by res judicata, and claims based on information not previously in the record do not allege operative facts showing that mother had a meritorious defense to present if relief was granted, Civ.R. 60(B).

**Custody.** In re H.K., 2020-Ohio-5416 | 9th Appellate District | 11/25/20 Award of legal custody of two dependent children to different non-parents was in children's best interest where, inter alia, there were concerns about mother's ability to care for children, her involvement with abusive and controlling men, her criminal history including offenses related to domestic violence, and her lack of stable housing and income, while the children's interaction with their proposed custodians was consistently positive, and the proposed custodians ensured that both children were able to regularly visit with mother, R.C. 2151.414(D) and 3109.04(F).

**Contempt.** In re I.L.J., 2020-Ohio-5434 | 8th Appellate District | 11/25/20 In action where father was found in contempt for violation of



order requiring him to pay a portion of mother's out-of-pocket medical costs incurred for child, trial court erred in entering contempt order with purge conditions that were impossible for father to meet where the deadline to purge was set three days prior to court's order being docketed, and the setting of a purge review hearing date did not automatically provide a new purge deadline.

**Delinquency.** *In re O.M., 2020-Ohio-5433* | 8th Appellate District | 11/25/20 Following adjudication of juvenile as delinquent, juvenile court's grant of state's motion to invoke adult portion of juvenile's dispositional sentence was error since there was not clear and convincing evidence that juvenile was unlikely to be rehabilitated, R.C. 2152.14(E)(1), where conduct juvenile engaged in did not involve the most serious offenses, record shows he was influenced by the gang he joined while at the state facility, he had completed only about one-third of his juvenile sentence when state filed its motion, and he had not yet completed most of the state facility's therapy programs.

**Delinquency.** *In re R.B., 2020-Ohio-5476* | Supreme Court of Ohio | 11/25/20 In adjudication of juvenile as delinquent for adult sex offense and classification as a sex offender with a disposition that included probation until age 21, juvenile court's classification review is not required to take place on the exact day the disposition ends, but within a reasonable time of the completion of disposition, R.C. 2152.84(A)(1), and juvenile court also has jurisdiction to review a juvenile's sex-offender classification after the juvenile reaches age 21, R.C. 2151.23(A)(15).

**Delinquency.** *In re A.F., 2020-Ohio-5420* | 1st Appellate District | 11/25/20 Adjudication of delinquency for adult assault on a peace officer met the sufficiency and weight of evidence standards where state presented testimony and video evidence that juvenile had knowingly caused or attempted to cause physical harm to a peace officer by purposely stomping on an officer's foot while the officer was attempting to search her following juvenile's arrest for causing damage to the juvenile residential facility where she was residing.

**Delinquency.** *In re A.P., 2020-Ohio-5423* | 1st Appellate District | 11/25/20 In adjudication of juvenile as delinquent for adult drug-related offenses, claim that R.C. 2925.37(B) is unconstitutionally vague is without merit since statute incorporates an objective standard by only prohibiting substances a reasonable person would believe to be drugs, enumerates specific factors for fact finder to consider in determining whether substance is a counterfeit-controlled substance, and requires a mental state of "knowingly" and, as applied to this case, juvenile altered pills by smashing and mixing them with oil and packaged the mixture to look like crack cocaine to an experienced officer.

**Dependency/Abused child.** *In re L.S., 2020-Ohio-5469* | 3rd Appellate District | 11/30/20 Adjudication of child as abused and dependent was not against the weight of evidence where, inter alia, expert testimony explained why child was diagnosed with abusive head trauma and physical abuse, and medical tests showed a large left subdural hemorrhage with a mid-line shift and a small right subdural hemorrhage, which demonstrated that there was a substantial risk to child's health and safety, R.C. 2151.031(C) and 2151.04(C); reasonable efforts were made by

agency to prevent the removal of child through case management and investigation services.

**Delinquency.** *In re A.S., 2020-Ohio-5490* | 10th Appellate District | 12/1/20 In adjudication of juvenile as delinquent for adult receiving stolen property, denial of motion to suppress statements made to officers during interviews was not error where juvenile validly waived his Miranda rights, even if no parent was present during the interview, since that fact is not enough to conclude juvenile did not knowingly and intelligently waive his rights, and the early morning hour of the interview did not meaningfully impact his ability to knowingly and intelligently waive his Miranda rights.

**Delinquency.** *In re J.M., 2020-Ohio-5498* | 1st Appellate District | 12/2/20 Adjudication of juvenile as delinquent for adult aggravated robbery and complicity to the accompanying firearm specifications was error as to complicity specifications since juvenile was not the principal offender and did not furnish, use, or dispose of the firearm used in the robbery, R.C. 2152.17(B)(1).

**Miranda.** *In re M.H., 2020-Ohio-5485* | Supreme Court of Ohio | 12/3/20 A child abuse investigator employed by a county children-services agency is not required to give Miranda warnings before questioning a child suspected of committing child abuse where the investigator is neither a law enforcement officer nor an agent of law enforcement acting under the direction or control of law enforcement, Jackson, and the admission of an incriminating statement obtained from a child suspect by a county child abuse investigator does not violate due process where police conduct is not causally related to the confession, Connelly.

**Custody.** *In re G.D.B., 2020-Ohio-5539* | 2nd Appellate District | 12/4/20 In dispute over parenting time and child support, trial court did not err in denying mother's motion to find father in contempt since mother presented no evidence that she was refused parenting time, father's failure to comply with the parties' agreement that was separate from court's standard drop off and pick up order was not a violation of the court's order, and father is required to pay his share of counseling services child actually received, but not for no-show appointments scheduled by mother.

**Custody.** *In re J.C., 2020-Ohio-5540* | 2nd Appellate District | 12/4/20 Award of legal custody of children to grandfather and his wife was not error where mother failed to make children's education a priority and she failed to make adequate progress on her case plan with regard to employment and housing, while children were doing well with grandparents, benefiting from routine and consistency and doing much better in school, and an extension of temporary custody was not in children's best interest, R.C. 2151.011 and 2151.353.

**Transcript.** *M.S. v. J.S., 2020-Ohio-5550* | 6th Appellate District | 12/4/20 In parenting dispute, trial court did not err in denying wife's motion to reconsider interlocutory order denying her objections to magistrate's decision on the basis of lack of a transcript since Juv.R. 40(D) provides a clear deadline for filing transcripts, and the entry providing an extension to file supplemental objections does not apply to the transcript.

**Custody.** *In re L.G., 2020-Ohio-6831* | 7th Appellate District | 12/4/20 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, mother and father were incarcerated, they did not protect their children from other individual living in their

home, and children had medical, development and nutritional problems, while children's lives improved in foster care with foster parents who wished to adopt them and helped one child with weekly therapy sessions and helped other child to have dramatic improvement in development, R.C. 2151.414(D).

**Custody.** *In re E.S.K., 2020-Ohio-5568* | 12th Appellate District | 12/7/20 Denial of grandmother's motion for custody and award of permanent custody of dependent child to agency was in child's best interest where, inter alia, child has severe medical problems including a genetic disorder that can lead to abnormal liver function, liver failure and cirrhosis, and foster mother was able to provide a stable, nurturing environment for child in which child has been thriving, while grandmother's understanding of child's health issues and ability to take care of child are uncertain, R.C. 2151.414(D).

**Custody.** *In re L.L., 2020-Ohio-5609* | 1st Appellate District | 12/9/20 Award of legal custody of child to father was in child's best interest since, inter alia, father is more likely to honor parenting time, and prior to the custody order, mother was only allowing father and child a few hours of supervised visitation time per week and was very critical of father, R.C. 3109.04.

**Custody.** *In re F.B., 2020-Ohio-5610* | 1st Appellate District | 12/9/20 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, mother passed away, children did not have strong emotional bond with father, guardian ad litem commented that children appeared standoffish or fearful for their safety during visits with father, each child suffered from a mental health disorder, and children made significant progress addressing medical and cognitive issues in care of foster families, R.C. 2151.414(D).

**Custody.** *In re R.C.S.L-K., 2020-Ohio-5624* | 8th Appellate District | 12/10/20 Dismissal for lack of jurisdiction of father's complaint for parentage, allocation of parental rights and responsibilities and parenting time was error since father's incarceration in another state, with release date a couple of years hence, did not prevent him from filing a complaint to establish paternity, dismissal was premature, and case may be subject to dismissal on other grounds at a later date.

**Custody.** *In re V.P., 2020-Ohio-5626* | 8th Appellate District | 12/10/20 Award of legal custody of dependent children to maternal aunt was not error where, inter alia, mother had mental health issues that prevented her from properly caring for her children, she had substance abuse problems, and she could not maintain stable housing, while children had been with maternal aunt for more than two years, and the children needed stability, R.C. 2151.353(A)(3) and 2151.414(D).

**Custody.** *In re L.R.B., 2020-Ohio-6642* | 2nd Appellate District | 12/11/20 Award of permanent custody of children to agency was in children's best interest where, inter alia, two children had serious injuries consistent with child abuse, one of the children died in the hospital, one child tested positive for opiates at birth and was hospitalized for trauma, and mother had mental health and drug problems, while children bonded with their foster family and with each other, R.C. 2151.414(E).

**Custody.** *In re J.B., 2020-Ohio-6651* | 6th Appellate District | 12/11/20 In parents' custody dispute involving their three children who were adjudicated dependent where parents reached a

settlement agreement, trial court erred in issuing its judgment without first determining that the custody settlement agreement was in the best interests of the children, R.C. 2151.353(A).

**Custody.** *Lucas v. Byers, 2020-Ohio-6679* | 11th Appellate District | 12/14/20 In custody action in which father requested reallocation of parental rights and responsibilities, trial court did not err in its designation of father as sole residential parent and legal custodian where father's allegations are not merely reiterations of those in previous litigation, father showed change of circumstances from mother's persistent and escalating, but unsubstantiated, allegations of child abuse against him, and mother failed to honor or facilitate parenting time with father, R.C. 3109.04.

**Custody.** *In re M.M.R., 2020-Ohio-6686* | 11th Appellate District | 12/14/20 Award of permanent custody of dependent child to agency was not error where mother failed to remedy issues that led to child's removal from her care, she continued to abuse drugs and did not complete recommended drug and alcohol treatments, she did not take recommended medicine for her mental health issues, and although mother maintained employment and housing, she failed to substantially comply with case objectives, while child bonded with her foster family and expressed the desire to remain in foster home, R.C. 2151.414.

**Custody.** *In re D.P., 2020-Ohio-6663* | 12th Appellate District | 12/14/20 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, mother had substance abuse problems, testing positive for cocaine and then missing an additional 19 drug screens, she was not able to take care of children since she was not employed, and she was pregnant and had no source of income, and father committed domestic violence against one of the children, while foster parents indicated that they intended to adopt the children, R.C. 2151.414(D).

**Custody.** *In re M.C., 2020-Ohio-6688* | 6th Appellate District | 12/15/20 Award of permanent custody of child to agency was not error where considerable evidence shows that mother's ongoing issues adverse to the best interest of her child precluded eligibility for reunification, mother struggled to focus on needs of child for any length of time, she continued to communicate with man who threatened to kill her unborn child, and she became pregnant again in order to preserve benefits eligibility, R.C. 2151.414.

**Custody.** *In re R.G.S., 2020-Ohio-6696* | 10th Appellate District | 12/15/20 Award of permanent custody of dependent children to agency was not error where parents were absent from children's lives for an extended period without justification, parents failed to meet case plan requirements regarding housing and income for a sufficient length of time, and although parents made recent progress toward sobriety and stability, permanent custody is in best interests of children and necessary for their welfare, R.C. 2151.414.

**Custody.** *In re K.K.E., 2020-Ohio-6723* | 5th Appellate District | 12/16/20 In complaint for custody and motion to intervene filed by appellants-dependent child's paternal aunt and uncle, trial court did not err in denying their motion to intervene where they failed to obtain any legal right to custody or visitation with child, they had no legal interest pursuant Civ.R. 24(A), and they had never been in loco parentis with child.

**Custody.** *In re E.S., 2020-Ohio-6708* | 9th Appellate District | 12/16/20 Award of permanent custody of child to agency was not error where judge admitted mother to the hearing by audio appearance, and mother voluntarily relinquished her parental rights to child after detailed colloquy with judge, court was not required to place mother under oath prior to her relinquishment of parental rights, evidence demonstrates that it was actually mother who attended hearing by telephone, and mother does not allege that she or her attorney perpetrated fraud on the court regarding audio participation in the hearing, R.C. 2151.414.

**Delinquency.** *In re D.W., 2020-Ohio-6714* | 1st Appellate District | 12/16/20 Adjudication of juvenile as delinquent for adult sexual imposition, R.C. 2907.06(A)(1), was supported by sufficient evidence of intent for the purpose of sexual gratification where there was no evidence the deliberate, forceful touching of victim's buttocks by juvenile was for a legitimate purpose or accidental, and when juvenile was confronted by victim, he fled.

**Custody.** *In re D.D., 2020-Ohio-6972* | 7th Appellate District | 12/16/20 In a custody dispute about shared parenting plan, the trial court's judgment regarding a number of issues related to the parenting plan is reversed since the court did not indicate that it considered the best interest of the children in reaching its decision, R.C. 3109.04(F).

**Custody.** *In re A.G., 2020-Ohio-6754* | 5th Appellate District | 12/17/20 Award of permanent custody of child to agency was in child's best interest where, inter alia, child is a teenager who expressed a desire to remain with her foster-to-adopt family and achieve permanence and stability, while mother had no contact with child for more than half a year, she had problems obtaining employment, and she experienced problems with drugs, R.C. 2151.414(D).

**Custody.** *In re S.B., 2020-Ohio-6753* | 5th Appellate District | 12/17/20 Placement of child into a planned permanent living arrangement was in child's best interest where child did not want to visit or live with his mother or father, and the case plan for child stated that child would be provided an independent living social worker who would work with him on independent living skills, R.C. 2151.415(C)(1) and (C)(2).

**Custody.** *In re K.G., 2020-Ohio-6744* | 8th Appellate District | 12/17/20 Award of permanent custody of neglected children to agency was in children's best interest where, inter alia, there were concerns about mother's lack of safe, stable housing and substance abuse issues, and intoxicated mother crashed vehicle into tree while driving children, while children want to remain in foster home where they are thriving, doing well in school and participating in school activities, R.C. 2151.414(D).

**Custody.** *In re Dn.R., 2020-Ohio-6794* | 3rd Appellate District | 12/17/20 Award of permanent custody of child to agency was not error where parents struggled to learn and comprehend basic parenting skills, they were unable to care for child in their home without assistance, agency provided parents with significant resources to assist in their progress, the proposed in-home support option was insufficient to overcome safety concerns, and child is well bonded with foster parents and has overcome many developmental delays, R.C. 2151.414.

**Delinquency.** *In re M.F., 2020-Ohio-6745* | 8th Appellate District | 12/17/20 Following an adjudication of delinquency, appeal of denial of 126 days credit for time spent at a residential facility is dismissed as moot where juvenile has completed the sentence to which the credit would apply.

**Delinquency.** *In re V.M., 2020-Ohio-6746* | 8th Appellate District | 12/17/20 Following an adjudication of delinquency, denial of 139 days credit for time spent at a residential facility was error since the juvenile was sufficiently restricted or "confined" for purposes of R.C. 2152.18(B) to be entitled to credit for time spent at facility.

**Dependent child.** *In re B.S., 2020-Ohio-6775* | 6th Appellate District | 12/18/20 Adjudicating child dependent was not error where child had bruises around his neck and blood and bruises in and around his ears that parents could not explain, agency did not act in bad faith by seeking emergency temporary custody of child because father terminated safety plan during agency's investigation, and father's actions raised concerns for the child that agency reasonably acted upon, R.C. 2151.03.

**Delinquency.** *In re P.C., 2020-Ohio-6791* | 9th Appellate District | 12/21/20 Following an adjudication by plea of juvenile as delinquent for adult sex offenses and subsequent release from the department of youth services after completion of the juvenile portion of his sentence, classification of juvenile as an adult Tier III sexual offender as a part of his serious youthful offender (SYO) stayed adult sentence was not error since trial court had the authority to classify juvenile as an adult sexual offender registrant as part of the stayed adult sentence of his SYO dispositional sentence, R.C. 2152.13(D)(2)(a)(i).

**Delinquency.** *In re D.O., 2020-Ohio-6862* | 1st Appellate District | 12/23/20 Adjudication of juvenile as a delinquent for adult burglary, R.C. 2911.12(A)(2), was not supported by the sufficiency and weight of evidence standards since the state failed to argue what identifiable criminal offense the juvenile intended to commit in the habitation, but appellant concedes the record supports an adjudication for trespass in a habitation when a person is present or likely to be present, R.C. 2911.12(B); remanded for entry of judgment adjudicating juvenile delinquent of trespass.

**Custody.** *In re C.W., 2020-Ohio-6869* | 6th Appellate District | 12/23/20 Award of permanent custody of abused, neglected and dependent children to agency was in children's best interest where, inter alia, children did not have enough food to eat, their punishment was excessive, and mother shot mice in home with a gun that she also pointed at children, while foster family wanted to adopt children and helped improve children's mental health, including getting one child to start communicating, R.C. 2151.414(D).

**Fair trial.** *T.S. v. A.T., 2020-Ohio-6871* | 6th Appellate District | 12/23/20 In custody dispute, judgment terminating shared parenting plan and designating father as custodial and residential parent is affirmed where mother's arguments that she was forced to proceed pro se and that she was improperly denied continuance are without merit since case was pending for a year, mother discharged her attorney at start of trial and raised no objection to proceeding pro se, her witnesses were ready to testify, she conducted herself as a party wishing to proceed to trial, and court afforded mother ample time to study guardian ad litem's report.

**Custody.** *In re J.P., 2020-Ohio-6926* | 5th Appellate District | 12/23/20 In father's appeal of award of permanent custody of child to agency, the record reflects that the trial court did not err where, inter alia, father was sentenced to a period of incarceration of 10 years shortly after the child's birth, father did not establish paternity until he was ordered to take a genetic test, and father's own actions made it impossible for him to participate in any case plan services, while child was doing well in his current placement and had a close relationship with his foster parents as well as his foster siblings, R.C. 2151.414.

**Custody.** *In re C.W., 2020-Ohio-6849* | 5th Appellate District | 12/23/20 Award of legal custody of dependent child to maternal cousin was not error where mother refused mental health assessment until just before hearing, she cancelled all visits with child after first hearing, and she refused case worker's home visits for a long period, while child loves being with maternal cousin and wishes to remain there, and maternal cousin meets child's special needs and will facilitate interaction with siblings, R.C. 3109.04.

**Delinquency.** *In re H.L., 2020-Ohio-6850* | 2nd Appellate District | 12/23/20 In an adjudication of juvenile as an unruly child due to truancy, denial of juvenile's motion for a continuance of the dispositional hearing of a violation of the unruly child/truancy complaint was not error in view of juvenile's continuing absence from school over an extended period of time.

**Custody.** *In re M.M., 2020-Ohio-7038* | 4th Appellate District | 12/23/20 Award of permanent custody of dependent children to agency was not error where parents struggled with continuing drug use and did not make adequate commitment to recovery, visitation attendance was inconsistent, neither parent had steady income, and father was abusive toward mother, while agency made reasonable efforts to provide support needed to comply with reunification plan, and children need a secure permanent placement, R.C. 2151.414.

**Delinquency.** *In re C.C., 2020-Ohio-6896* | 5th Appellate District | 12/24/20 Adjudication of juvenile as delinquent of, inter alia, adult abduction, R.C. 2905.02(A)(2), was supported by sufficient evidence where victims testified appellant held them at gunpoint and, although appellant did not physically touch or restrain them and did not order them to remain still, his actions conveyed the threat that victims were not free to move, satisfying the statutory elements on the use of force or threat.

**Custody.** *In re N.C., 2020-Ohio-6929* | 5th Appellate District | 12/28/20 After trial court terminated agency's temporary custody of dependent child and granted legal custody to father, and child later reported that she had been sexually abused by minor relative, in appeal by aunt and mother, court erred in failing to find that there had been a change in circumstances; however, since court found that father's legal custody of child was in child's best interest, judgment is affirmed where, inter alia, father moved from home with child and notified law enforcement when child reported abuse by relative, R.C. 2151.414(D)(1).

**Delinquency.** *In re P.B., 2020-Ohio-6721* | Supreme Court of Ohio | 12/29/20 Cause is dismissed as having been improvidently accepted.

**Delinquency.** *In re M.B., 2020-Ohio-6927* | 5th Appellate District | 12/29/20 In adjudication by plea of juvenile as delinquent of, inter alia, two counts of adult vehicular manslaughter and failure to yield the right of way and that juvenile was a juvenile traffic offender, claim that trial counsel provided ineffective assistance by not adding to the statement of facts that the victim's blood alcohol level was above the legal limit is without merit since there was no evidence to show that victim's condition of being under the influence contributed to the cause of the accident.

**Visitation.** *In re T.M., 2020-Ohio-6950* | 1st Appellate District | 12/30/20 Award of custody of children to fathers and maternal aunt and uncle was not error since mother was previously charged with child endangerment and never progressed beyond ability to have supervised visits with children, but trial court erred in modifying mother's visitation schedule where it provided no explanation or analysis and there was no indication it had considered R.C. 3109.051(D) factors and R.C. 2151.414.

**Custody.** *In re S.P., 2021-Ohio-25* | 6th Appellate District | 1/8/21 Award of permanent custody of neglected and dependent children to agency was in children's best interest where, inter alia, mother was incarcerated for failure to protect children's older sibling from alleged sexual assault by father of two younger children, one child had extreme special needs, paternal grandmother who sought custody knew of physical abuse and failed to take steps to protect children, she also had substance abuse issues, her home study was denied, and children needed a secure and permanent placement, R.C. 2151.414.

**Custody.** *In re K.C., 2021-Ohio-184* | 4th Appellate District | 1/13/21 Award of permanent custody of dependent child was in child's best interest where, inter alia, services for mother to address substance abuse and mental health concerns were terminated when she stopped attending required meetings, and caseworker stated that mother made zero progress on her case plan, while child and foster family appeared bonded and child seemed to have positive interactions with the foster family.

**Custody.** *In re O.D.-L., 2021-Ohio-79* | 2nd Appellate District | 1/15/21 Award of permanent custody of neglected and dependent child to agency was in child's best interest where, inter alia, mother failed to complete mental health assessment, continued to test positive for drugs, and failed to attend training to care for child's special needs, and the court was not obligated to find that a child's relative was unsuitable before granting an agency permanent custody, but the court did find that grandmother did not appreciate the severity of child's condition, R.C. 2151.414.

**Bindover.** *State v. Lamb, 2021-Ohio-87* | 6th Appellate District | 1/15/21 Bindover of juvenile from juvenile court to adult court for murder charge was not error where, although appellant's subsequent guilty plea did not waive due process claims arising from the bindover hearing, the identification process was not unconstitutionally tainted and unreliable, the constitutional right to confrontation is a trial right and has not been extended to preliminary proceedings, and a juvenile court is not required to make a determination as to whether evidence presented at a bindover hearing reflected appellant's guilt.

**Custody.** *In re R.G., 2021-Ohio-93* | 9th Appellate District | 1/19/21 In mother's appeal of award of child visitation rights to grandmother and her husband, judgment is vacated where grandmother's husband lacked standing because he was not married to grandmother at commencement of case, and once he married grandmother, he did not file a motion to intervene; also, R.C. 2151.23 does not confer subject matter jurisdiction on juvenile court to consider grandmother's complaint solely for visitation, and filing of document designating grandmother as child's attorney in fact did not create concurrent jurisdiction because it was not filed independently, R.C. 3109.12(A).

**Disposition.** *In re Z.S., 2021-Ohio-118* | 5th Appellate District | 1/19/21 Judgment awarding temporary custody of children to agency is reversed since trial court did not comply with the deadline for issuing a dispositional order, R.C. 2151.35(B)(1), and the fact that the parents filed a motion to withdraw their admission to the allegation of dependency did not extend the time limit.

**Custody.** *In re R.B., 2021-Ohio-157* | 5th Appellate District | 1/22/21 Award of legal custody of neglected children to foster parents was in children's best interest, proven by a preponderance of evidence, since children were happy, well-bonded and well-adjusted in their new home and had their own rooms and an abundance of toys, while, inter alia, mother had drug problem and did not attend hearings; R.C. 2151.414(D) provides guidance on issue of best interest in legal custody cases since parents are not divested of their residual parental rights.

**Custody.** *Costilla v. Weimerskirch, 2021-Ohio-165* | 3rd Appellate District | 1/25/21 Denial of father's objections to magistrate's report recommending that mother be designated residential parent of parties' child was not error since it was in the child's best interest to remain in the same home as mother's daughter where children attended school together, child had stability with mother's daughter with whom he resided his entire life, the two children did a lot of activities together, and the presence of a sibling is of extreme importance in determining a child's best interest, R.C. 3109.04(F)(1).

**Custody.** *In re A.S., 2021-Ohio-218* | 10th Appellate District | 1/28/21 Award of permanent custody of child to agency was in child's best interest where, inter alia, child was the victim of both physical and sexual abuse, during a medical exam child reported that she ate toilet paper and toothpaste because of hunger, and medical personnel determined that her weight loss and extreme hunger were due to environmental neglect, while child repeatedly expressed a desire to remain in her current foster home and be adopted by the foster parent, R.C. 2151.414(D).

## Landlord and Tenant

**Appeal.** *Roote v. Hibernia Apts., L.L.C., 2020-Ohio-5401* | 10th Appellate District | 1/24/20 In tenant's complaint against landlord for retaliatory eviction, trial court's judgment in favor of landlord on both tenant's claim and landlord's counterclaim is affirmed where tenant failed to provide transcript as required by Civ.R. 53(D), tenant's assignments of error all involve questions of fact which cannot be fully reviewed without transcript, any new evidence provided cannot be considered on appeal, and trial court proceedings are presumed to be valid.

**Forcible entry and detainer.** *Hall v. GMS Mgt., Inc.*, 2020-Ohio-5601 | 9th Appellate District | 12/9/20 In landlord's forcible entry and detainer action against tenant for breach of agreement and failure to pay rent, judgment in favor of landlord was not error where tenant failed to submit transcript of proceedings, his objections address actions by court of appeals in prior appeal and cannot be considered, and even if alleged discrepancy concerning the date he vacated were true, it would not impact the court's ruling.

**Appeal.** *Landings at Beckett Ridge v. Holmes*, 2020-Ohio-6900 | 12th Appellate District | 12/28/20 In landlord's forcible entry and detainer action against tenant for failure to pay rent, resulting in judgment for landlord, tenant's appeal is dismissed as moot where landlord was restored to property, tenant failed to seek stay of execution and post supersedeas bond following filing of her appeal, and none of the exceptions to mootness apply, R.C. 1923.14.

**Appeal.** In *re S.M.*, 2021-Ohio-50 | 9th Appellate District | 1/13/21 Award of legal custody of dependent child to maternal aunt under order of protective supervision requires continuing involvement and review by court and agency, rendering custody order not final and appealable, and father's appeal is dismissed because child was removed from aunt's custody and placed in emergency custody of agency, and therefore the prior order is no longer in effect, R.C. 2151.011.

**Child support.** *Koscho v. Hill*, 2021-Ohio-110 | 4th Appellate District | 1/14/21 Increase in father's child support obligation was not error since, inter alia, there was insufficient evidence to establish that mother had an ownership interest in motor vehicle business owned by her boyfriend where mother was characterized as a subcontractor by the business, the business did not withhold taxes from her checks, and her tax records reflect that she was self-employed.

**Custody.** In *re J.S.*, 2021-Ohio-78 | 2nd Appellate District | 1/15/21 Award of permanent custody of neglected and dependent child to agency was not error where, inter alia, mother struggled to control her emotions and was at times emotionally and physically abusive, and although she made progress on her case plan, she failed to show that she had adequately addressed her mental health issues, while child reported that he did not feel safe with mother; also, father refused to submit to drug screens and did not provide appropriate housing, R.C. 2151.414.

**Habitability.** *McNelly v. Conde*, 2021-Ohio-146 | 2nd Appellate District | 1/22/21 In tenant's action against landlord to recover deposit after duplex was found uninhabitable on move-in day, judgment in favor of tenant is affirmed where parties' oral lease agreement, which was made enforceable when tenant moved her furniture into premises, could not be executed because landlord breached the contract when he failed to provide a habitable premises, and subsequent contract in which landlord attempted to charge the deposit amount for storage of furniture failed for lack of consideration, R.C. 5123.04(A)(2).

**Appeal.** *OH Seven, L.L.C. v. Lee*, 2021-Ohio-199 | 5th Appellate District | 1/28/21 In property owner's forcible entry and detainer action against tenant, trial court's issuance of a writ of restitution is affirmed where tenant failed to file objections to magistrate's decision but instead filed a pro se motion for injunction and order of stay of forcible eviction, claiming that he was never a tenant but was a purchaser of the property; however, there

is no way to determine whether those arguments were made to the magistrate since there is no transcript, tenant did not allege plain error, and there is no evidence of plain error, Civ.R. 53(D)(3)(b)(iv).

## Natural Resources

**Law of case.** *Woods v. Big Sky Energy, Inc.*, 2020-Ohio-5309 | 5th Appellate District | 11/16/20 In property owners' action for unjust enrichment and related claims regarding property subject to oil and gas lease, trial court erred on remand in awarding damages for unjust enrichment since that claim was decided prior to remand, and law of the case doctrine prevents the court from reversing its own prior judgment dismissing the claim; also, the amount of compensatory damages for conversion awarded on remand was error because trial court was limited to awarding damages equal to converted royalties rather than net revenue.

**Mineral interests.** *West v. Bode*, 2020-Ohio-5473 | Supreme Court of Ohio | 12/2/20 In plaintiffs-property owners' action to declare that severed one-half of royalty in oil and gas underlying their land was extinguished and defendants-royalty holders filed a counterclaim to declare that they owned the royalty interest, court of appeals' judgment is affirmed holding that trial court erred in ruling that a mineral interest cannot be extinguished under the Marketable Title Act (MTA) due to the existence of the more specific Dormant Mineral Act (DMA) since extinguishment under the MTA and abandonment under the DMA are distinct tests and rights that do not conflict.

**Mineral interests.** *Hartline v. Atkinson*, 2020-Ohio-5605 | 7th Appellate District | 12/8/20 In plaintiffs-property owners' action to quiet title to oil and gas interests owned by defendants, trial court erred in granting summary judgment to plaintiffs where inclusion of notice of abandonment between body of complaint and exhibits did not satisfy notice requirements of R.C. 5301.56, and the mineral interests could not be deemed abandoned under the Dormant Mineral Act and vested in plaintiffs until notice was served to each defendant.

**Mineral interests.** *Hartline v. Atkinson*, 2020-Ohio-5606 | 7th Appellate District | 12/8/20 In plaintiffs-property owners' action to quiet title to oil and gas interests held by defendants, trial court did not err in granting summary judgment to defendants where defendants' interest was subject to two title transactions subsequent to plaintiffs' root of title, saving defendants' interest from being extinguished by the Marketable Title Act, as an exception under R.C. 5301.49(D), the interest was not required to be specifically listed in the title transactions, and defendant timely filed claim to preserve interest pursuant to R.C. 5301.56.

**Permit applications.** *State ex rel. Omni Energy Group, L.L.C. v. Ohio Dept. of Natural Resources, Div. of Oil & Gas Resources Mgt.*, 2020-Ohio-5581 | Supreme Court of Ohio | 12/9/20 Petition for writ of mandamus to compel state division chief to render decisions on two saltwater-injection-well-permit applications is granted, not to render a decision on the applications, but rather to compel chief to rule on the validity of objections to the application, and if the chief finds that an objection is relevant or presents a substantive issue, a hearing is to be scheduled within 30 days of receipt of the objection, after which the chief may either issue or deny the permit, Ohio Adm. Code 1501:9-3-06(H)(2)(c) and (d).

**Mineral interests.** *Gerrity v. Chervenak*, 2020-Ohio-6705 | Supreme Court of Ohio | 12/17/20 In plaintiff's action to quiet title and for declaratory judgment that he is exclusive owner of mineral rights in property owned by defendants, appeals court did not err in affirming summary judgment in favor of defendants where defendants' inability to identify all holders of the severed mineral interest did not preclude application of the Ohio Dormant Mineral Act (ODMA), they satisfied R.C. 5301.56(E) by providing notice of abandonment by publication, and plaintiff could have taken actions under the ODMA to prevent mineral interest from being deemed abandoned.

**Reconsideration.** *French v. Ascent Resources-Utica, L.L.C.*, 2020-Ohio-6828 | 7th Appellate District | 12/22/20 In case in which instant court ruled that by providing notice of mandatory arbitration under R.C. 2711.01(B)(1) did not apply, that the matter was subject to arbitration, and that even though the oil and gas leases created an interest in real estate, they were not issues concerning title to or possession of real estate, plaintiffs' application for reconsideration is denied since plaintiffs failed to raise an issue that was not at all or not fully considered by court and failed to identify a dispositive issue requiring en banc consideration, App.R. 26(A)(2).

**Damages.** *Columbia Gas Transm., L.L.C. v. Ohio Valley Coal Co.*, 2020-Ohio-6787 | Supreme Court of Ohio | 12/22/20 In action under R.C. 1513.15 against defendant-coal mining company by plaintiff-gas pipeline to recover costs of preventive measures that plaintiff took to protect against surface subsidence from mining, court of appeals erred in ruling in favor of plaintiff, finding that subsidence damages waivers in coal severance deeds were ineffective on reasoning that the waivers were rendered invalid by a regulation written by an administrative agency; because the agency lacked statutory authority to adopt an administrative regulation invalidating the mining company's property interest, the damages waivers are valid.

**Mineral interests.** *Smith v. Collectors Triangle, Ltd.*, 2020-Ohio-6966 | 7th Appellate District | 12/31/20 In plaintiffs' action to quiet title in oil and gas rights on property purchased by defendants, plaintiffs' application for partial reconsideration of opinion claiming that court of appeals erroneously described the acreage involved in the appeal is denied where there were two parcels of property at issue which were sold during partition proceedings, only one tract was sold to defendants in sheriff's deed, and whether or not the oil and gas lease applies to both tracts of land is irrelevant to current issue of whether the sheriff's deed can now be collaterally attacked by defendants.

**Mineral interests.** *Smith v. Collectors Triangle, Ltd.*, 2020-Ohio-6965 | 7th Appellate District | 12/31/20 In plaintiffs' action seeking to quiet title to oil and gas rights on property purchased by defendants where case was remanded to determine if prior sheriff's deed which reserved oil and gas royalties could be collaterally attacked, defendants' motion for reconsideration is denied since the general warranty deed conveyed the royalty interests pertaining to a specific well to defendants and reserved remaining oil and gas rights, and because the matter is factually distinguishable from recent case law, en banc consideration is denied, App.R. 26(A).

## Procedure

**Appeal.** *In re J.I., 2020-Ohio-5301* | 2nd Appellate District | 11/13/20 Appeal of award of permanent custody of dependent children to agency is dismissed because the appellant died after filing notice of appeal, rendering the case moot.

**Interrogatories.** *7471 Tyler Blvd., L.L.C. v. Titan Asphalt & Paving, Inc., 2020-Ohio-5304* | 2nd Appellate District | 11/16/20 In commercial building owner's breach of contract action against paving company, alleging non-performance of contract, trial court did not err in rejecting plaintiff's proposed interrogatories since Civ.R. 49(B) vests the court with discretionary power to review interrogatories prior to submission to jury, and in this case, it found that jury instructions and general verdict forms were more appropriate, that the interrogatories were incomplete and failed to test the jury's verdict, and that they implied an incorrect statement of the law.

**Discovery.** *In re Foreclosure of Liens for Delinquent Taxes by Action in Rem, Donaker v. Parcels for Mineral Right Taxes Encumbered with Delinquent Tax Liens & Diversified Oil & Gas L.L.C., 2020-Ohio-5311* | 5th Appellate District | 11/16/20 In county treasurer's in rem action to foreclose on tax liens against two mineral rights parcels for which unnamed defendant-gas company claimed ownership, trial court erred in denying defendant's Civ.R. 56(F) motion for additional time for discovery where defendant properly filed an answer pursuant to R.C. 5721.18 identifying its ownership and alleging that a clerical error had occurred, the motion for additional time was within contemplation of administrative order tolling time requirements during pandemic, and defendant was pursuing claim with board of revision.

**Judge disqualification.** *In re Disqualification of Piper, 2020-Ohio-5362* | Supreme Court of Ohio | 11/17/20 Affidavit of disqualification of appellate judge in appeal of denial of affiant's post-conviction motions is dismissed as moot where, although judge served as prosecutor and was involved in investigation of the affiant, judge is not assigned to underlying appeal and he affirmed that he will not participate in it, R.C. 2501.13, 2701.03.

**Discovery.** *Byrd v. Lindsay Corp., 2020-Ohio-5461* | 7th Appellate District | 11/19/20 In product liability action claiming negligence regarding manufacturer's guardrails following death of motorist where manufacturer filed a foreign subpoena duces tecum directing business competitor to produce documents in support of manufacturer's allegations that competitor had aided in discrediting manufacturer's guardrails, it was not error to grant competitor's motions to quash and for protective order where information sought by manufacturer was not relevant to underlying action and would not reasonably lead to discovery of admissible evidence, R.C. 2319.09.

**Appeal.** *Doe v. Dayton Bd. of Edn., 2020-Ohio-5355* | 2nd Appellate District | 11/20/20 In action against board of education and related defendants filed by plaintiffs-mother and father of daughter who was injured during a school playground attack where father's original appeal was dismissed on reasoning that claim against defendant-unnamed entity was not resolved, and he then dismissed unnamed defendant under Civ.R. 41(A)(1), father's subsequent appeal is dismissed since he failed to file a new or amended appeal within the allowed time period, App.R. 4.

**Appeal.** *Kopp v. Diehl Lake Co., 2020-Ohio-5463* | 7th Appellate District | 11/20/20 In nuisance complaint by appellee-co-lessee of property which prompted second co-lessee to file claim for defamation, appeal of summary judgment for appellees on defamation claim is dismissed for lack of subject matter jurisdiction where all claims have not been decided, immediate consideration of an appeal is not required for relief, and judicial economy is not served by a bifurcated appeal.

**Appeal.** *In re 7242 Chapel Rd., Madison, OH 44057, 2020-Ohio-5385* | 11th Appellate District | 11/23/20 Appeal of order imposing a deposit for several animals that were impounded from appellants' residence is dismissed as being moot since appellants failed to pay the required deposit for animals' care following probable cause hearing, and the animals were subsequently transferred or adopted out to third parties and cannot be returned.

**Sanctions.** *Jallaq v. Jallaq, 2020-Ohio-5402* | 10th Appellate District | 11/24/20 Granting motion for sanctions filed by attorneys for plaintiff in underlying case was not error where motion was filed in response to third-party complaint filed by defendants' attorney in underlying case and complaint alleged discrimination and other serious related claims, there was no evidence to support the allegations in the complaint, defendants did not authorize third-party complaint, and award of attorney fees as sanction was not an abuse of discretion, R.C. 2323.51.

**Appeal.** *Wilmington Savs. Fund Soc. v. Postelwaite, 2020-Ohio-5405* | 10th Appellate District | 11/24/20 In foreclosure action resulting in a judgment for lender, appeal is dismissed since it was not timely filed pursuant to App.R. 3 and 4.

**Case transfer.** *Cotner v. Coey, 2020-Ohio-5499* | 5th Appellate District | 12/2/20 In father's action seeking reallocation of parental rights and responsibilities, trial court erred in transferring case from domestic relations court to juvenile court pursuant to R.C. 3109.06 because the juvenile court did not consent to the transfer prior to domestic relations court's judgment entry, and domestic relations court did not make a finding of parental unsuitability.

**Contempt.** *Carpenter v. Lemley, 2020-Ohio-5529* | 5th Appellate District | 12/2/20 In case in which a civil protection order was issued against defendant, his motion to hold plaintiff in direct contempt of court for giving untruthful testimony in the hearing before the magistrate was properly denied since a private party may not file an independent contempt action seeking sanctions for suborning perjury; also, the court found that plaintiff's testimony was credible.

**Judge disqualification.** *In re Disqualification of Miller, 2020-Ohio-6876* | Supreme Court of Ohio | 12/2/20 Affidavit of disqualification, R.C. 2701.03, asserting that judge demonstrated bias by denying affiant's motion to withdraw plea for lack of jurisdiction is denied where judge vacated the denial and admitted that she made an error in issuing order; making a mistake does not demonstrate bias.

**Judicial power.** *State ex rel. Fiser v. Kolesar, 2020-Ohio-5483* | Supreme Court of Ohio | 12/3/20 In case where county court judge (CJ) issued administrative order to increase pay for probation officers, administrative judge (AJ) vacated the order on reasoning that CJ lacked authority, and both judges filed petitions for writs of prohibition, AJ's motion for judgment on the

pleadings is denied since AJ's vacating entry was an exercise of judicial power and AJ patently and unambiguously lacked jurisdiction to issue that entry, a peremptory writ of prohibition is issued that vacates AJ's vacating entry, and CJ's motion for judgment on the pleadings is granted since AJ did not allege that CJ was about to exercise judicial or quasi-judicial power.

**Declaratory judgment.** *Tabbaq v. Lexpro, L.L.C., 2020-Ohio-5514* | 8th Appellate District | 12/3/20 In plaintiff-property owner's action for declaratory relief from bank's attempts to execute on judgment liens against plaintiff's property in another country, trial court did not err in dismissing complaint because relief sought was outside the scope of Declaratory Judgment Act, and plaintiff's attempt to collaterally attack final judgment rendered in separate cases and the ensuing attempt to execute upon the judgments is impermissible under R.C. 2721.02.

**Pleading.** *AmeriCredit Fin. Servs. v. Blue, 2020-Ohio-5513* | 8th Appellate District | 12/3/20 In bank's action for money judgment and replevin against defendant for failure to make payments on retail installment sale contract, summary judgment in favor of bank was not error where mistake in captioning of complaint was corrected in amended complaint and did not deprive court of jurisdiction, and the record supports the amount awarded.

**Invited error.** *Centerville v. Lash, 2020-Ohio-5536* | 2nd Appellate District | 12/4/20 In city's action against taxpayers seeking unpaid income taxes and attorney fees, trial court did not err in declining to award attorney fees since the default judgment entry that the trial court signed was drafted by the city, the city did not address attorney fees in the entry, and the doctrine of invited error prevents the city from challenging the judgment on appeal; however, law-of-the-case doctrine does not preclude the city from seeking relief under Civ.R. 60(B).

**Relief from judgment.** *Scheetz v. Jubilee Heating & Cooling, 2020-Ohio-5555* | 6th Appellate District | 12/4/20 In plaintiff-contractor's action to collect damages, claiming defendant's incomplete heating and cooling work, resulting in judgment for plaintiff in absence of defendant at hearing, trial court did not err in denying defendant's motion for relief from judgment, arguing excusable neglect, where defendant had prior knowledge of problems receiving mail due to condition of his mailbox, he received initial complaint at that address and should have expected additional court correspondence, and he could have found notice of the hearing on court's website or through a phone call, Civ.R. 60(B).

**Mandamus.** *In re Removal of Whaley, 2020-Ohio-7030* | 2nd Appellate District | 12/4/20 Petition for writ of mandamus to declare unconstitutional statewide mask order and city's mask ordinance is denied since mandamus is an order to perform a legal duty, in this case relator is seeking to prohibit respondents-state and city officials from doing something, and a mandamus claim seeking declaratory judgment or prohibitory injunction must be dismissed for lack of jurisdiction, R.C. 2731.01; court also lacks jurisdiction over petitioner's other claim for an order of forfeiture of office for local officials, R.C. 733.72 and 3.08.

**Judgment on pleadings.** *State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommittee, 2020-Ohio-5561* | 9th Appellate District | 12/7/20 In relator's complaint alleging that respondents-members of subcommittee taskforce overseeing planned renovation of courthouse had conducted

business in violation of state's Open Meetings Act, trial court erred in sustaining respondents' motion for judgment on the pleadings where, although relator failed to prove that subcommittee is a public body under R.C. 121.22(B), the court considered evidence which should have been excluded and did not construe relator's allegation to be true, as required by Civ.R. 12(C).

**Judgment on pleadings.** *State ex rel. Maynard v. Medina Courthouse Steering Comm., 2020-Ohio-5562* | 9th Appellate District | 12/7/20 In relator's complaint alleging that respondents-members of steering committee created by county to control design and construction of courthouse renovation had violated state's Open Meetings Act, trial court erred in granting respondents' motions for judgment on the pleadings where, although relator failed to prove that steering committee is a public body or that it had a meeting pursuant to R.C. 121.22(B), the court did not construe relator's allegations as true as required by Civ.R. 12(C).

**Frivolous conduct.** *A.D. Transport Express, Inc. v. Lloyds Towing Serv. & Sales, L.L.C., 2020-Ohio-5630* | 5th Appellate District | 12/8/20 In plaintiffs-transport business' action for fraud against defendants-towing service, claiming inflated invoice charges, trial court did not err in granting defendants' motion for sanctions under R.C. 2323.51 where there was no indication of fraud on the part of defendants and the attorney fees awarded were reasonable and customary; plaintiff cannot use a Civ.R. 60(B) motion as a substitute for a timely appeal.

**Transcript.** *Mayne v. Wood, 2020-Ohio-5629* | 10th Appellate District | 12/10/20 Denial of father's motion for change of custody and modification of visitation order is affirmed since father did not file a transcript and the regularity of the proceedings below is affirmed.

**Judge disqualification.** *In re Disqualification of Fleegle, 2020-Ohio-5636* | Supreme Court of Ohio | 12/10/20 Affidavit seeking to disqualify judge, alleging failure to implement precautions to protect against the spread of coronavirus in the courtroom, is granted where judge conducts all hearings in person rather than by remote technology, judge does not mandate facial coverings despite statewide mask order, and judge cannot articulate necessity of proceeding with jury trials during dangerous state of a pandemic, R.C. 2701.03.

**Jury.** *Reo v. Lindstedt, 2020-Ohio-6674* | 11th Appellate District | 12/14/20 In plaintiff's action for, inter alia, defamation against defendant for ongoing internet harassment, trial court did not err in preventing defendant from excluding a juror based on her race where, even if the jury was different in belief and composition from a jury in defendant's home state, equal protection clause forbids challenges to potential jurors on account of their race, and plaintiff's removal of suspected racists from jury is not removal based on race.

**Mandamus/Prohibition.** *State ex rel. Welt v. Doherty, 2020-Ohio-6684* | 11th Appellate District | 12/14/20 Petition for writs of mandamus and prohibition filed by relator-attorney for plaintiff in underlying debt collection action requesting that respondent-judge dismiss claims made against him by defendant-debtor in underlying case is dismissed since relator cannot prove he has no other adequate legal remedy where underlying defendant asserted counterclaims against relator, but because relator was not a party in underlying

debt collection action, the counterclaims were actually third-party claims, which are still pending against relator, and relator can appeal decision when respondent-judge issues final judgment.

**Appeal.** *Rivkind v. Krempec, 2020-Ohio-6687* | 11th Appellate District | 12/14/20 Appeal is dismissed as being untimely filed where appellant was served with the judgment entry within the three-day period required in Civ.R. 58(B), the 30-day period began to run on the date of entry of judgment, and appellant failed to file notice of appeal pursuant to App.R. 4.

**Judge disqualification.** *In re Disqualification of Thomakos, 2020-Ohio-6874* | Supreme Court of Ohio | 12/14/20 Affiant's affidavit of disqualification, R.C. 2701.03, in which affiant alleges that judge's biased comments about him at his co-defendant's sentencing hearing violated his due-process rights is dismissed since affiant has no cases pending before the judge's court, the court will not decide an affidavit of disqualification based merely on the possibility of a remand from the court of appeals, and alleged violation of due process may be addressed on appeal.

**Judge disqualification.** *In re Disqualification of Paris, 2020-Ohio-6875* | Supreme Court of Ohio | 12/15/20 Affidavit of disqualification, R.C. 2701.03, in which affiant-criminal defendant asserts that judge's unnecessary continuances and appointment of ineffective counsel were an attempt to intimidate affiant into entering a guilty plea is denied where, inter alia, there were continuances resulting from the pandemic, and it is outside the scope of an affidavit of disqualification to contest matters of substantive or procedural law such as affiant's claim that her speedy-trials rights have been violated.

**Judge disqualification.** *In re Disqualification of Lucci, 2020-Ohio-6873* | Supreme Court of Ohio | 12/16/20 Criminal defendant's-affiant's affidavit of disqualification, R.C. 2701.03, is denied where affiant's assertion that the judge decided against imposing a jointly recommended sentence is insufficient, by itself, to require disqualification; affiant may have other remedies, including a direct appeal.

**Vacating judgment.** *Osborne v. Kroger Co., 2020-Ohio-6757* | 10th Appellate District | 12/17/20 In plaintiff's action against pharmacy for negligence in filling drug prescription, resulting in a settlement agreement and dismissal with prejudice by the trial court followed by its order granting plaintiff's Civ.R. 60(B) motion for relief from judgment, trial court subsequently erred by sua sponte vacating its order granting relief from judgment to plaintiff since no provision in Civ.R. 60(B) allows the court to vacate judgment on its own initiative, and the proper procedure for making substantive changes to a judgment is by a motion.

**Standing.** *Ohioans for Concealed Carry, Inc. v. Columbus, 2020-Ohio-6724* | Supreme Court of Ohio | 12/18/20 In plaintiffs-gun-rights groups' action for declaratory judgment and injunctive relief challenging city's weapons-under-disability ordinance and, subsequently repealed, rate-of-fire-acceleration accessory ordinance, alleging them to be unlawful under R.C. 9.68, dismissal of plaintiffs for lack of standing under R.C. 9.68, 733.58 or Ch. 2721 was not error since plaintiffs allege only that their members own firearms, there is no allegation that they own acceleration accessories or plan to own or to sell them, and there is no allegation that any member will be affected by the weapons-under-disability ordinance.

**Class action.** *State ex rel. Merrill v. State Dept of Natural Resources, 2020-Ohio-6811* | 11th Appellate District | 12/21/20 In plaintiff's action seeking to separately litigate claims settled in previous class action, claiming that the settlement agreement was defective, trial court's judgment to enforce the settlement and for civil contempt is affirmed since plaintiff's challenge is a collateral attack on the judgment and is limited to examination of procedural due process, trial court complied with Civ.R. 23 requirements which are not reviewable outside direct appeal, plaintiff was a member of the certified class bound by prohibition against bringing future actions, and plaintiff therefore was in contempt of the settlement agreement.

**Pleading.** *Hughes v. Portage Cty., 2020-Ohio-6809* | 11th Appellate District | 12/21/20 Dismissal of taxpayers' class action and denial of their motion for leave to file an amended complaint addressing each issue raised in the county's motion to dismiss was error where discovery had not commenced, the court had not yet held a pretrial or status conference, taxpayers did not make dilatory filings or excessive amended pleadings, and there was no showing of prejudice to the county if leave to amend complaint had been granted, Civ.R. 15(A).

**Affidavit/Transcript.** *Evans v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-6839* | 10th Appellate District | 12/22/20 In negligence action, the court of claims did not err in declining to consider plaintiff's objections to magistrate's decision where plaintiff filed an affidavit rather than a transcript without asserting that a transcript was unavailable, as required by Civ.R. 53(D)(3)(b)(iii), and plaintiff's affidavit was insufficient under Civ.R. 53 in failing to describe all relevant evidence presented to the magistrate.

**Appeal.** *Pertuset v. Hull, 2020-Ohio-6942* | 4th Appellate District | 12/22/20 In former property owners' conversion and replevin action relating to, inter alia, livestock on property following judgment against plaintiffs in underlying foreclosure action, plaintiffs' appeal of summary judgment against them is dismissed for lack of a final appealable order since trial court made no ruling relative to distribution of funds resulting from defendants' sale of the livestock at auction and deposited with the court.

**Dismissal.** *State ex rel. Banker's Choice, L.L.C. v. Cincinnati, 2020-Ohio-6864* | 1st Appellate District | 12/23/20 Dismissal for failure to state a claim of relator's petition for writ of mandamus to compel city to initiate appropriation proceedings was error since the complaint did not conclusively show on its face that the action was barred by the statute of limitations, the facts that the city sought to have trial court take judicial notice of were not the type for which judicial notice is proper, and the court could not convert the motion to dismiss to a motion for summary judgment since the court did not give the parties notice of its intent to do so, and the documents attached to the motion to dismiss did not constitute evidence recognized by Civ.R. 56(C).

**Creditor's bill.** *Marietta v. Verhovc, 2020-Ohio-7020* | 4th Appellate District | 12/23/20 In city's creditor's bill action to require rent payments due defendants to be paid to city to satisfy city's underlying judgment against defendants, trial court erred in granting summary judgment to city since city did not show that defendants did not have sufficient personal or real property subject to levy to satisfy the underlying judgment, R.C. 2333.01.

**Discovery/Privilege.** *Jacobs v. Equity Trust Co.*, 2020-Ohio-6882 | 9th Appellate District | 12/28/20 In putative class action in which plaintiffs made claims related to investment losses in their retirement accounts, trial court erred in ordering defendants to provide plaintiffs the custodial account agreement-related documents that are protected by attorney-client privilege where, inter alia, certain emails, billing records and an affidavit show that draft revisions of the agreement were documents prepared based upon legal advice rendered and sent to counsel to obtain further legal advice rather than routine documents sent to outside counsel to avoid disclosure under the guise of attorney-client privilege, R.C. 2317.02(A).

**Appeal.** *Wray v. Ice House Ventures, L.L.C.*, 2020-Ohio-6935 | 10th Appellate District | 12/29/20 In department of transportation's (ODOT) action to appropriate a portion of defendants' business property to reconfigure roads, leading to settlement agreement that was not fully complied with by ODOT, appeal of trial court's order and entry granting defendants' motion to enforce agreed judgment is dismissed for lack of a final appealable order where fewer than all the claims were resolved and the court did not include Civ.R. 54(B) language of no just reason for delay, R.C. 2505.02.

**Dismissal.** *Jabr v. Ohio Dept. of Job & Family Servs.*, 2020-Ohio-6941 | 10th Appellate District | 12/29/20 In plaintiff's action against state department alleging he was wrongfully ordered to pay child support, trial court did not err in granting department's motion to dismiss under Civ.R. 12(B)(1) and (6) based on lack of subject-matter jurisdiction where plaintiff's recourse for relief was with juvenile court or county child support enforcement agency, and claim was previously litigated and thus is barred by the collateral estoppel form of res judicata.

**Attorney fees.** *Fiscus v. Nordquist*, 2020-Ohio-7014 | 7th Appellate District | 12/30/20 In case in which court of appeals affirmed trial court's judgment ordering specific performance by appellant of a contract to purchase real property executed by the parties, court of appeals denies appellee's motion for attorney fees which are claimed under a provision of the contract which authorizes appellee to bring an action for damages and specific performance upon appellant's default; since appellee seeks to enforce a provision of the contract, the motion for supplemental attorney fees should have been filed with the trial court.

**Appeal.** *Walsh v. Walsh*, 2020-Ohio-6998 | 11th Appellate District | 12/31/20 In dissolution proceeding in which magistrate ordered husband to pay a certain sum every month for spousal support as ordered by an earlier judgment entry, pending resolution of husband's post-judgment motion to reopen the case, husband's appeal is dismissed for lack of a final, appealable order since the magistrate's order has not yet received judicial approval, it remains an interlocutory order and may be reconsidered on the court's own motion or that of a party.

**Transcript cost.** *Pettay v. DeVry Univ., Inc.*, 2020-Ohio-7010 | 10th Appellate District | 12/31/20 In age discrimination action against university by terminated professor, resulting in a summary judgment for university, trial court erred in granting university's motion for taxation of costs against professor for expenses associated with deposition transcripts submitted in support of the summary

judgment motion since Vossman II, reversing Vossman I, holds that a discovery deposition conducted outside the presence of a judge is not a proceeding within the meaning of R.C. 2303.21, and the cost of procuring the transcript of such a deposition may not be recovered as a cost under Civ.R. 54(D).

**Sanctions.** *Knapp v. Husa*, 2020-Ohio-6987 | 9th Appellate District | 12/31/20 In a boat purchaser's breach of contract action against seller for prior damage to boat which was discovered when he sold boat to third party, trial court did not err in awarding to seller sanctions against purchaser and his counsel where, although purchaser failed to commence action due to defective service, making seller a non-party to the action, a motion for sanctions under R.C. 2323.51 is collateral to the underlying proceedings, and the court retained statutory jurisdiction to consider the motion.

**Appeal.** *Nelson v. Nelson*, 2021-Ohio-33 | 11th Appellate District | 1/7/21 Appeal of a judgment ruling on objections to a magistrate's decision and ordering counsel for appellee to prepare and submit a judgment entry conforming with the trial court's orders and the parties' agreements is dismissed for lack of a final appealable order since the order does not meet any of the criteria in R.C. 2505.02(B).

**Pleading.** *Health & Wellness Lifestyle Clubs v. Valentine*, 2021-Ohio-42 | 5th Appellate District | 1/8/21 In plaintiff's-health club's action for, inter alia, fraudulent misrepresentation against defendant-accountant who allegedly reported inaccurate financial information about golf clubs that plaintiff contracted to purchase, it was error to grant defendant's motion for judgment on the pleadings where the court made factual determinations beyond the scope of pleadings regarding whether damages were caused by defendant's actions, and plaintiff pled its fraud claim with particularity and sufficiently alleged causes for promissory estoppel and professional negligence, Civ.R. 12(C).

**Judge disqualification.** *In re Disqualification of Swenski*, 2021-Ohio-113 | Supreme Court of Ohio | 1/11/21 Affidavit of disqualification of judge is denied since affiant's assertion that judge destroyed evidence was addressed and rejected in response to affiant's previous affidavit of disqualification, and exhibit that affiant claims demonstrates destruction of evidence does not demonstrate that judge tampered with evidence or that she should be disqualified, R.C. 2701.03.

**Judge disqualification.** *In re Disqualification of Gill*, 2021-Ohio-112 | Supreme Court of Ohio | 1/12/21 Affidavit of disqualification of judge and magistrate is denied where R.C. 2701.03 does not permit chief justice to consider claims of bias or prejudice against magistrates, and affiant's claim of prejudice based on adverse rulings by judge is meritless since a judge's adverse rulings, without more, are not evidence of bias or grounds for disqualification.

**Appeal.** *Taxiputinbay, L.L.C. v. Put-In-Bay*, 2021-Ohio-191 | 6th Appellate District | 1/14/21 Appeal of preliminary injunction prohibiting village from taking any action against taxi company regarding alleged violation of a village ordinance in company's operation of taxis is dismissed for lack of a final appealable order since a preliminary injunction which acts to maintain the status quo pending a ruling on the merits is not a final appealable order under R.C. 2505.02.

**Objections/Transcript.** *Henderson v. Fowler*, 2021-Ohio-144 | 2nd Appellate District | 1/22/21 In petitioner's action for civil protection order against her neighbor, trial court's judgment adopting magistrate's decision denying petition is affirmed where petitioner did not timely file objections pursuant to Civ.R. 65.1(G) and may not challenge the decision on appeal, and she failed to provide a transcript of full hearing as required by Civ.R. 65.1(F).

**Judge disqualification.** *In re Disqualification of Saffold*, 2021-Ohio-114 | Supreme Court of Ohio | 1/24/21 Affidavit of disqualification of judge is granted to avoid any appearance of partiality and to ensure confidence in the fairness of the proceedings where judge's bailiff's participation in ordering defendant to appear for pretrials and threatening to revoke bond for failure to timely appear went beyond mere scheduling matters, and to the extent that the hearing in question was a pretrial conference contemplated by Crim.R. 171, the judge should have been involved, R.C. 2701.03.

**Small claims court.** *Adams v. June*, 2021-Ohio-168 | 3rd Appellate District | 1/25/21 In breach of contract action in small claims court, resulting in ruling that neither party owed money to the other, the trial court's judgment is affirmed where the court did not err in allowing defendant's witness to testify, even though defendant did not disclose witness to plaintiff prior to trial, since plaintiff did not identify any legal rule that governs the small claims court and indicates that the trial court erred by allowing the witness to testify, App.R. 16(A)(7).

**Prohibition/Eminent domain.** *State ex rel. Bohlen v. Halliday*, 2021-Ohio-194 | Supreme Court of Ohio | 1/27/21 In utility's action to take property by eminent domain, resulting in trial court's ruling that utility's takings were necessary for a public use, and property owners timely appealed under R.C. 163.09(B)(3), property owners' petition for writ of prohibition to prevent the trial court from moving forward with compensation trial is granted since common-law principles and R.C. 163.09(B)(2)'s "subject to" language patently and unambiguously divest the trial court of jurisdiction to proceed with the compensation trial while property owners' appeal of the necessity determination is pending.

**Continuance.** *Miller v. Flowers*, 2021-Ohio-220 | 10th Appellate District | 1/28/21 Denial of plaintiffs' emergency motion for a continuance of trial was not error where, inter alia, case had been re-filed and three years had elapsed since the original filing, plaintiffs' prior motion for continuance had been denied, the emergency motion was filed one day before trial, subpoenas for witnesses had already been issued, defendant had presumably cleared her professional schedule, defense counsel were prepared to proceed, and the circumstances of the trial were entirely consistent with the relevant official government orders relating to COVID-19 that were in place at the time the motion was filed.

**Appeal.** *CitiMortgage v. Nyamusevya*, 2021-Ohio-219 | 10th Appellate District | 1/28/21 In foreclosure action resulting in judgment for bank, trial court erred in denying borrower's Civ.R. 60(B) motion for relief from judgment, filed after borrower had filed an appeal but before appeal was set for argument or determined by the court, since trial court lacked jurisdiction to rule on the Civ.R. 60(B) motion while borrower's direct appeal remained pending.

## Professional Responsibility

**Suspension.** *Cleveland Metro. Bar Assn. v. Downing*, 2020-Ohio-5297 | Supreme Court of Ohio | 11/16/20 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

**Resignation.** *In re Resignation of Burton*, 2020-Ohio-5347 | Supreme Court of Ohio | 11/20/20 Attorney resigned from the practice of law with disciplinary action pending.

**Resignation.** *In re Resignation of Adams*, 2020-Ohio-5346 | Supreme Court of Ohio | 11/20/20 Attorney resigned from the practice of law with disciplinary action pending.

**Disbarment.** *Disciplinary Counsel v. Sarver*, 2020-Ohio-5478 | Supreme Court of Ohio | 12/2/20 Attorney is permanently disbarred from the practice of law.

**Public reprimand.** *Disciplinary Counsel v. Thomas*, 2020-Ohio-5582 | Supreme Court of Ohio | 12/9/20 Attorney is issued a public reprimand.

**Suspension.** *Disciplinary Counsel v. Faro*, 2020-Ohio-5611 | Supreme Court of Ohio | 12/10/20 Attorney is suspended from the practice of law for a period of 90 days, with reinstatement conditioned on reinstatement to practice law before the U.S. Patent and Trademark Office.

**Suspension.** *Disciplinary Counsel v. Atkins*, 2020-Ohio-5612 | Supreme Court of Ohio | 12/10/20 Attorney is suspended from the practice of law for a period of nine months, with reinstatement conditioned on reinstatement to practice law in another state.

**Suspension.** *Disciplinary Counsel v. Searl*, 2020-Ohio-6656 | Supreme Court of Ohio | 12/14/20 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

**Reinstatement.** *Disciplinary Counsel v. Eisler*, 2020-Ohio-6703 | Supreme Court of Ohio | 12/16/20 Attorney is reinstated to the practice of law.

**Reinstatement.** *Disciplinary Counsel v. Atway*, 2020-Ohio-6704 | Supreme Court of Ohio | 12/16/20 Attorney is reinstated to the practice of law.

**Suspension.** *Warren Cty. Bar Assn. v. Moorman*, 2020-Ohio-6823 | Supreme Court of Ohio | 12/22/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

**Resignation.** *In re Resignation of Palombaro*, 2020-Ohio-6824 | Supreme Court of Ohio | 12/22/20 Attorney resigned from the practice of law with disciplinary action pending.

**Reinstatement.** *Columbus Bar Assn. v. McNeal*, 2020-Ohio-6837 | Supreme Court of Ohio | 12/23/20 Attorney is reinstated to the practice of law.

**Suspension.** *In re Reed*, 2020-Ohio-6841 | Supreme Court of Ohio | 12/23/20 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

**Reinstatement.** *Disciplinary Counsel v. Brueggeman*, 2021-Ohio-21 | Supreme Court of Ohio | 1/11/21 Attorney is reinstated to the practice of law.

**Reinstatement.** *Disciplinary Counsel v. Mason*, 2021-Ohio-43 | Supreme Court of Ohio | 1/12/21 Attorney is reinstated to the practice of law.

**Resignation.** *In re Resignation of Winkfield*, 2021-Ohio-55 | Supreme Court of Ohio | 1/14/21 Attorney resigns from the practice of law with disciplinary action pending.

**Suspension.** *Disciplinary Counsel v. Bachman*, 2020-Ohio-6732 | Supreme Court of Ohio | 1/18/21 Attorney is suspended from the practice of law for six months.

**Resignation.** *In re Resignation of Koogler*, 2021-Ohio-130 | Supreme Court of Ohio | 1/22/21 Attorney resigns from the practice of law with disciplinary action pending.

**Resignation.** *In re Resignation of McGuire*, 2021-Ohio-134 | Supreme Court of Ohio | 1/22/21 Attorney resigns from the practice of law with disciplinary action pending.

**Resignation.** *In re Resignation of Vettori*, 2021-Ohio-135 | Supreme Court of Ohio | 1/22/21 Attorney resigns from the practice of law with disciplinary action pending.

## Public Records

**Security record.** *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 2020-Ohio-5371 | Supreme Court of Ohio | 11/24/20 In journalist's action under R.C. 2743.75 requesting access to outdoor courthouse video recording of the shooting of judge by assailant, court of appeals erred in finding that the video was exempt from disclosure as a security record since the video itself did not meet the R.C. 149.433 definition of a security record, the incident took place on a public street where it was visible to bystanders, and prosecutor failed to show in affidavits how the video was used for protecting or maintaining the security of public office against attack.

**Requester's designee.** *State ex rel. Summers v. Fox*, 2020-Ohio-5585 | Supreme Court of Ohio | 12/10/20 In inmate's father's mandamus action to compel county officials to produce public records, officials' argument that father is not entitled to records on reasoning that he is son's designee and did not meet the R.C. 149.43(B)(8) requirements is without merit since there is no direct evidence that son directed father's efforts, there is no basis for extending statute's language to someone who wants to benefit an inmate, and there is no basis to fashion a per se rule creating an irrebuttable presumption that family members of a certain relationship are acting as designees; writ is granted in part and denied in part.

**Inmate's records.** *State ex rel. McGlown v. Quilter*, 2020-Ohio-6659 | 6th Appellate District | 12/10/20 Inmate-requester's petition for writ of mandamus to compel clerk of court to provide records related to requester's criminal case is denied where, with regard to some of the requested records, requester did not obtain a finding from the sentencing judge that the records were necessary to support a justiciable claim, as required by R.C. 149.43(B)(8), and with regard to other records, they were provided to requester, and the request is moot.

**Mootness.** *Barnes v. Cleveland Div. of Records Administration*, 2021-Ohio-212 | 8th Appellate District | 1/22/21 Public records requester's petition for writ of mandamus to compel city to produce records is denied on the basis of mootness

where, inter alia, the city promptly denied the first request because of the request's vagueness, after requester filed a modified request and sought direction on the form of records that were available, the city responded, making the records available for inspection, and on several occasions, requester did inspect them.

## Public Utilities

**Earnings review.** *In re Determination of Existence of Significantly Excessive Earnings for 2017 Under the Elec. Sec. Plan of Ohio Edison Co.*, 2020-Ohio-5450 | Supreme Court of Ohio | 12/1/20 In public utilities commission's R.C. 4928.143(F) annual earnings review of electric-distribution utility that provides service under an electric security plan, commission erred in excluding from the earnings test revenue resulting from utility's Distribution Modernization Rider, which was approved as part of the company's electric security plan, and the case is remanded for further proceedings.

**Jurisdiction.** *In re Complaint of Wingo v. Nationwide Energy Partners, L.L.C.*, 2020-Ohio-5583 | Supreme Court of Ohio | 12/9/20 Dismissal by commission of complaint against a submetering company, which buys gas and electric and resells to the ultimate consumer, for lack of jurisdiction on reasoning that company was not a public utility was error since commission's jurisdiction is governed by statute which defines what constitutes a public utility, but commission instead used a modified Shroyer test of its own making to rule that company was not a public utility, and case is remanded.

**Frivolous conduct.** *Ohio Edison Co. v. Cubick*, 2020-Ohio-7027 | 7th Appellate District | 12/24/20 In utility's action against property owners for an injunction prohibiting owners from interfering with its easement rights relating to herbicide use where utility argued that prior court order prohibiting herbicide use was rendered by a court lacking jurisdiction on reasoning that the PUCO had jurisdiction, judgment for utility on counterclaim for frivolous conduct was not error since instant action was filed before recent case law holding that trial court had jurisdiction over the issue, and therefore filing the current action was not frivolous under R.C. 2323.51.

## Real Property

**Commission.** *Danberry Co. v. Nadeau*, 2020-Ohio-5366 | 6th Appellate District | 11/20/20 In realtor's breach of contract action against client to recover commission, summary judgment for realtor was not error since realtor satisfied obligation to find a buyer for client's real property, the sale fell through because client failed to satisfy her obligations under the purchase agreement, and realtor was entitled to commission.

**Successive motions.** *Yeckley v. Yeckley*, 2020-Ohio-5432 | 8th Appellate District | 11/25/20 In plaintiffs-siblings' partition action regarding family house, which was filed prior to foreclosure and sale due to default on mortgage, trial court did not err in denying two siblings' second joint motion for reconsideration of accounting and rents where neither sibling filed timely objections to court's decision on original motion for accounting and rents, they set forth the same arguments in their second joint motion, which did not cure their failure to timely object, and magistrate's decision determined that each sibling was entitled to a proportionate share of house, adjusted by setoffs.



**Summary judgment.** *Buerkle v. VanAuken*, 2020-Ohio-5440 | 6th Appellate District | 11/25/20 In plaintiffs-property owners' action to quiet title to property, alleging that defendant was not a bona fide purchaser, trial court erred in denying plaintiffs' motion for reconsideration with respect to the granting of interlocutory order in favor of defendant on theft and fraud counterclaims because the decision was rendered prior to the time plaintiffs' response was due, but plaintiffs' claims for, inter alia, quiet title were appropriately dismissed for failure to prosecute, Civ.R. 41(B).

**Misrepresentation.** *Shannon v. Fischer*, 2020-Ohio-5567 | 12th Appellate District | 12/7/20 In home buyers' action against home sellers for, inter alia, negligent misrepresentation for nondisclosure of water damage and mold evident after the sale, trial court erred in granting summary judgment in favor of sellers where evidence shows that sellers had actual knowledge of an ongoing water intrusion issue and presence of mold behind walls, witness testimony contradicted sellers' testimony and information on residential disclosure form, and buyers' failure to have mold inspection performed does not vitiate sellers' duty to produce truthful disclosure report.

**Mediation.** *US Bank Natl. Assn. v. Puroloa*, 2020-Ohio-5579 | 11th Appellate District | 12/7/20 In bank's foreclosure action against mortgagor where trial court had referred the matter to mediation, court did not err in returning the matter to the active docket and granting summary judgment in favor of bank since the mediation order was an interlocutory order which did not vest in mortgagor the right to continue mediating in perpetuity until resolution has been reached, the case was returned to active docket because a resolution did not result from mediation efforts, and mortgagor provided no evidence that further mediation would have been productive.

**Condominium declaration.** *Papa's Homes, L.L.C. v. Maple Park Terrace Condominium Assn., Inc.*, 2020-Ohio-5621 | 8th Appellate District | 12/10/20 In condominium owner's action against condominium association seeking reimbursement of costs to remediate water damage to its unit, summary judgment in favor of association was not error where the declaration of condominium ownership provides that owner is responsible to maintain and repair all structures and fixtures which are appurtenances to the unit, and owner failed to show that the terms of the declaration were ambiguous or that the ceiling and floor were excluded from its responsibility.

**Sheriff's sale.** *Bayview Loan Servicing, L.L.C. v. Griffen*, 2020-Ohio-6666 | 12th Appellate District | 12/14/20 In foreclosure action resulting in sheriff's sale of property, trial court erred in granting purchaser's Civ.R. 60(B) motion to vacate sale in which he claimed that he had just been advised about an encroachment issue with the property since the sale was governed by the doctrine of caveat emptor, the purchaser did not allege fraud, and the primary purpose of judicial sale is to protect the interest of the mortgagor-debtor and to promote a general policy which provides judicial sales with a certain degree of finality.

**Fraud.** *Jochum v. Howard Hanna Co.*, 2020-Ohio-6676 | 11th Appellate District | 12/14/20 In plaintiff's-home buyer's action for, inter alia, fraud against defendants-real estate agents for selling him a home built on a salt dumpsite, summary judgment in favor of defendants was not error where plaintiff failed to show that defendants

knew of the problems before he purchased the home, plaintiff signed the purchase offer with the money back guarantee crossed out, defendants' economic gain from sale does not establish fraud, and there is no evidence that defendants supplied plaintiff with false information.

**Foreclosure.** *U.S. Bank Natl. Assn. v. Kasidonis*, 2020-Ohio-6716 | 1st Appellate District | 12/16/20 In bank's foreclosure action against defendant-borrower for default under terms of note and loan modification agreement encumbering real property, trial court did not err in granting bank's motion for summary judgment and decree in foreclosure where court has jurisdiction over foreclosure pursuant to R.C. 2323.07, and defendant's pending federal case involving another mortgagor does not affect the court's jurisdiction to proceed.

**Foreclosure.** *U.S. Bank Natl. Assn. v. George*, 2020-Ohio-6758 | 10th Appellate District | 12/17/20 In bank's foreclosure action against mortgagors for default under terms of note and mortgage, judgment in favor of bank was not error since documents contained in collateral file were notarized and self-authenticating, they were not inadmissible hearsay because they were offered to show transactions regarding mortgage, and although bank did not prove physical location of note at all times before lawsuit, it produced at trial the original note with mortgagors' signatures.

**Foreclosure.** *KeyBank Natl. Assn. v. Robinson*, 2020-Ohio-6734 | 8th Appellate District | 12/17/20 In foreclosure action, summary judgment for plaintiff-bank was not error where defendant executed and delivered mortgage deed conveying property to bank to secure payment of promissory note, and bank did not attempt to hold defendant personally liable for defaulting on the note and mortgage, instead pursuing foreclosure in rem after defendant's personal liability was discharged in Chapter 7 bankruptcy proceeding.

**Foreclosure.** *Chemical Bank v. Capone*, 2020-Ohio-6790 | 9th Appellate District | 12/21/20 Appeal of denial of mortgagor's motion to vacate judgment in favor of bank in foreclosure action against mortgagor for default on note and mortgage is dismissed as moot where the matter was extinguished through satisfaction of judgment when subject property was sold and proceeds of sale were distributed.

**Foreclosure.** *Rutana v. Koulinos*, 2020-Ohio-6848 | 7th Appellate District | 12/23/20 In plaintiff's-property owner's action to quiet title to property subject to an indemnifying mortgage resulting from a business agreement between owner's deceased husband and defendant, trial court did not err in granting summary judgment to defendant on his foreclosure counterclaim where the foreclosure action was an in-rem action to foreclose on security of mortgage and not to collect on underlying debt, and defendant's timely re-filing of mortgage extended his mortgage lien for an additional 21 years, R.C. 5301.30.

**Foreclosure.** *New Residential Mtge. v. Barnes*, 2020-Ohio-6907 | 12th Appellate District | 12/28/20 In plaintiff's foreclosure action in which property was sold at sheriff's sale to third party, it was error to deny plaintiff's motion to set aside the sale since the doctrine of mistake applied where plaintiff's counsel mistakenly went in person to bid on the foreclosed property after the sale had been moved online, when plaintiff's counsel learned that sale was online it was too late to register as a judgment creditor and the bid was rejected, and the sale's objective was to raise money due

plaintiff and not allow the property to be sold at a price below its market value due to a mistake.

**Foreclosure.** *Wilmington Savings Fund Society v. Salahuddin*, 2020-Ohio-6934 | 10th Appellate District | 12/28/20 In bank's foreclosure action against mortgagor for default on payment of note, trial court erred in granting bank's motion for summary judgment where mortgagor's allegation that bank failed to comply with HUD regulations required bank to provide Civ.R. 56(C) evidentiary quality material to demonstrate its compliance with 24 C.F.R. 203.602, and bank failed to establish that any letters from bank or former mortgage holder, which intended to notify mortgagor that she was in default, satisfied all HUD requirements for adequate delinquency notice.

**Foreclosure.** *Bank of New York Mellon v. Ackerman*, 2020-Ohio-6954 | 2nd Appellate District | 12/30/20 In mortgagor's appeal of confirmation judgment following bank's foreclosure and sale of property, judgment is affirmed since the foreclosure sale was conducted in accordance with R.C. 2329.31, mortgagor's claims are not germane to confirmation proceeding and have been litigated and rejected multiple times, and even if claims were relevant they would be barred by doctrine of res judicata.

**Foreclosure.** *Bank of New York v. Nutter*, 2020-Ohio-6988 | 9th Appellate District | 12/30/20 In foreclosure action filed by bank, prompting homeowner's association (HOA) to file a lien against property for unpaid HOA fees, trial court did not err in finding that HOA was not entitled to recover attorney fees in its cross-claim where HOA failed to satisfy notice requirements set forth in R.C. 5312.1(C) to assess new fees related to enforcement of declaration of covenants, and even if HOA had satisfied all elements for foreclosure on valid lien, foreclosure was not an equitable remedy.

**Condominium declaration.** *Georgalis v. Cloak Factory Condominium Unit Owners' Assn.*, 2021-Ohio-66 | 8th Appellate District | 1/14/21 In condominium owner's breach of contract action challenging assessment of basement and first floor units for their share of parking lease expenses, even though the units did not have their own parking spaces, partial summary judgment for unit owners' association was not error since the declaration provides that assessments are based on each unit owner's proportionate share of ownership, and ownership percentage in the common elements remains constant except for unanimous amendment to the declaration.

**Foreclosure.** *JP Morgan Chase Bank, N.A. v. Loseke*, 2021-Ohio-68 | 8th Appellate District | 1/14/21 In bank's foreclosure action against mortgagor for default on payment of note, trial court did not err in granting summary judgment in favor of bank where bank's undisputed possession of the note indorsed in blank gave bank standing to enforce the note, affidavit evidence established the amount due and owing on the note, and mortgagor failed to present evidence to challenge the amount of principal or interest due.

**Default judgment.** *Davis v. Johnson*, 2021-Ohio-85 | 6th Appellate District | 1/15/21 In plaintiffs' action for breach of land installment contract for property sold to defendant, trial court erred in denying defendant's motion for relief from default judgment without a hearing where defendant presented evidence that he had paid the land installment contract, and also plaintiffs sought money damages in complaint but were awarded possession of property, and because judgment

award was different in kind from that prayed for, defendant did allege grounds for relief under Civ.R. 60(B)(5).

**Statute of frauds.** Canter v. Garvin, 2021-Ohio-99 | 3rd Appellate District | 1/19/21 In breach of contract action against estate trustees alleging that plaintiff contracted with decedent to purchase part of decedent's farm, it was error to order specific performance of alleged contract where, although plaintiff and others described missing written documents containing terms of an option contract, there was no evidence that the alleged documents provided for plaintiff's work on the farm to be consideration, the requirements of statute of frauds were not met, and under the facts relating to plaintiff's improvements to the property, the doctrine of part performance did not remove the contract from the statute of frauds.

## Tax

**Real property.** Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 2020-Ohio-5427 | 8th Appellate District | 11/25/20 Evaluation of four commercial industrial parcels by board of tax appeals (BTA) which rejected board of education's recent sale-based evaluation is affirmed where there was no credible evidence that the sale of membership in LLC was solely a sale of real property, there was no conveyance fee statement, purchase agreement or other evidence documenting the sale price of the property, and the facts of the instant case are similar to cases in which the BTA ruled that no "sale" of real property occurred.

**Overpayment.** Musial Offices, Ltd. v. Cuyahoga Cty., 2020-Ohio-5426 | 8th Appellate District | 11/25/20 In plaintiffs-property owners' class action to recover overpayment of real property taxes following reappraisal, trial court's judgment in favor of plaintiffs on their equitable unjust enrichment claim was error because the overpayments were commingled with other payments and disbursed to local municipalities and were therefore no longer in county's possession, but plaintiffs' cross appeal for illegal taxation is sustained because county did not calculate the property tax values from the best source of information pursuant to R.C. 5713.03 and 5715.22.

**Real property.** Yim v. Cuyahoga Cty. Bd. of Revision, 2020-Ohio-6742 | 8th Appellate District | 12/17/20 In taxpayers' appeal of board of tax appeals' (BTA) valuation of their property, BTA's valuation is affirmed since it was based on the sale price of the property that taxpayers paid in a recent arms-length transaction, and the lower price of previous HUD sale was properly rejected by the BTA since the property owners failed to provide any testimony from a person with firsthand knowledge of the HUD sale to rebut the presumption that such a sale was a forced sale and not indicative of value.

**Real property.** Sheffield Crossing Station, L.L.C. v. Lorain Cty. Bd. of Revision, 2020-Ohio-6938 | 10th Appellate District | 12/29/20 Valuation of taxpayer's property by board of tax appeals (BTA) was error since BTA valued the property on the sole basis of its sale price and did not fully consider the merits of appraisal submitted by taxpayer where the appraisal's underlying assumption that property should be valued as unoccupied and available to lease is explicitly permitted, and the BTA's legal error in discarding the appraisal undermines its decision to adopt the sale price as evidence of true value, R.C. 5714.04 and 5713.03.

**Rent.** LRC Realty, Inc. v. B.E.B. Properties, 2020-Ohio-6999 | 11th Appellate District | 12/31/20 In action by plaintiff-purchaser of property to declare entitlement to cell tower rental payments, which were also claimed by assignees of original property owner, trial court erred in granting summary judgment and in awarding damages to defendant-former property owner since evidence showed that assignees paid value for rights to rental payments and defendant knew it did not own the rights when it sold the property to plaintiff.

## Torts

**Slip and fall.** Pantona v. Erview Land Co., L.L.C., 2020-Ohio-5333 | 8th Appellate District | 11/19/20 In plaintiff's slip and fall negligence action against defendant-office building owner for injuries sustained when she fell while stepping off escalator platform curb, summary judgment in favor of defendant was error where an issue of material fact remained as to whether the hazard was open and obvious because the yellow painting on the curb extended onto the adjacent garage floor, potentially concealing the hazard, and plaintiff testified that she fell because the ground looked flat.

**Discovery.** State ex rel. Campus Health Servs., Inc. v. Russo, 2020-Ohio-5436 | 8th Appellate District | 11/20/20 After judge ordered production of federal tax returns subject to protective order in underlying wrongful death action, petition for writ of prohibition to prevent judge from disclosing trade secrets in tax returns is dismissed under Civ.R. 12(B)(6) since judge has jurisdiction over underlying action and relators have other adequate remedies including redaction of tax records, protective order to protect purported trade secrets, or motion to intervene in trial court along with motion to quash subpoena duces tecum issued for discovery.

**Medical malpractice.** Clawson v. Hts. Chiropractic Physicians, L.L.C., 2020-Ohio-5351 | 2nd Appellate District | 11/20/20 In medical malpractice complaint, summary judgment for defendant-chiropractic practice was error on reasoning that practice could not be liable for claim against employee after employee was dismissed for lack of service of process where, under the doctrine of respondeat superior, a plaintiff may still pursue the undisputed employer of the employee even though employee has been dismissed from the case.

**Negligence.** Little v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-7016 | Ohio Court of Claims | 11/20/20 In negligence action by plaintiff-inmate alleging that he was injured by corrections officer who used excessive force to subdue him when he attempted to enter medical area through employee entrance, judgment is for state department since evidence shows that officer used minimal force to subdue plaintiff who officer perceived as a threat.

**Dram Shop Act.** Jirousek v. Sladek, 2020-Ohio-5382 | 11th Appellate District | 11/23/20 In plaintiff's negligence action against bar for serious injuries he sustained when struck by a vehicle after heavily drinking alcohol he purchased elsewhere while sitting at the bar's patio, trial court did not err in granting bar's Civ.R. 12(B)(6) motion to dismiss since the Dram Shop Act provides exclusive remedy against liquor permit holders for negligent acts of intoxicated patrons, and plaintiff has no claim under the Act because his injuries were sustained off the premises and caused by his own intoxication, R.C. 4301.22(B).

**Limitations.** Dewine v. State Farm Ins. Co., 2020-Ohio-5517 | 4th Appellate District | 11/23/20 In passenger's negligence action against vehicle driver for injuries sustained in collision with guardrail, summary judgment for driver on reasoning that the claim was barred by the statute of limitations was error where driver was an Ohio resident on date of accident and left the state for non-business reasons, tolling the statute of limitations pursuant to R.C. 2305.15, and the permanence of driver's move does not make the tolling provision unconstitutional as applied to him because he did not move for employment reasons, implicating the commerce clause.

**Wrongful death.** Clark v. Ohio Dept. of Transp., 2020-Ohio-5400 | 10th Appellate District | 11/24/20 In estate's wrongful death action against state department, arising from death of independent contractor's employee-decedent in bridge collapse construction accident, trial court did not err in granting summary judgment to department since an entity that hires an independent contractor to perform inherently dangerous work owes no duty of care to independent contractor's employees, and department did not actively participate in the job where independent contractor decided to begin deck removal from east span instead of center span, resulting in bridge collapse.

**Reinstatement of case.** Barrel v. Farrell Lines, Inc., 2020-Ohio-5509 | 8th Appellate District | 12/3/20 In estate's action against decedent-merchant marine's employer for damages arising from decedent's lung cancer and death, which was administratively dismissed without prejudice under R.C. 2307.93(C) for failure to make a prima facie showing, trial court did not err in granting estate's motion to reinstate case to active docket since estate's expert satisfies the requirement of a competent medical authority, his second report cites asbestos as a substantial contributing factor to decedent's condition, and his report is sufficient to support prima facie requirements of R.C. 2307.92.

**Negligence.** Rolling v. Kings Transfer, Inc., 2020-Ohio-5541 | 2nd Appellate District | 12/4/20 In plaintiff's-utility worker's negligence action for injuries sustained when he jumped from the top of cab of a semi-truck on which he had climbed to disengage overhead wire attached to pole to avoid being hit by the falling pole which broke when defendant's trailer also snagged an overhead wire attached to the pole, summary judgment in favor of defendant was error since defendant had a statutory obligation to drive at a speed that would allow him to stop within the assured clear distance ahead to avoid snagging wire, and proximate cause and comparative negligence are questions for the jury, R.C. 4511.21.

**Negligent hiring.** Evans v. Akron Gen. Med. Ctr., 2020-Ohio-5535 | Supreme Court of Ohio | 12/8/20 In patient's action for negligent hiring, retention or supervision arising from incident about which patient asserted that she had been sexually abused while seeking treatment in emergency department, summary judgment for medical center was error since a plaintiff need not show that an employee has been adjudicated civilly liable or has been found guilty of a crime by a court in order for the plaintiff to maintain a negligent hiring, retention or supervision claim, and there were fact issues relating to physician's alleged conduct and whether such conduct was legally wrongful.

**Medical malpractice.** *Fairrow v. OhioHealth Corp.*, 2020-Ohio-5595 | 10th Appellate District | 12/8/20 In medical malpractice action asserting that false passages of catheter damaged plaintiff-patient's urethra, resulting in a jury verdict for plaintiffs, trial court did not err in denying defendants' motions for a new trial and JNOV since plaintiffs' expert stated that defendants did deviate from the standard of care, and as such, plaintiffs presented evidence through medical records and testimony that, if believed, a jury could reasonably infer the false catheter passages were more than trivial; conflicting testimony of defendants' expert was a matter for jury to weigh.

**Defamation.** *Missionaries of the Sacred Heart, Inc. v. Ohio Dept. of Youth Servs.*, 2020-Ohio-5596 | 10th Appellate District | 12/8/20 In plaintiffs-members of religious organization's defamation action against defendant-state department of youth services for making public a suspension letter, trial court did not err in dismissing the claim under Civ.R. 12(B)(6) where plaintiffs alleged only that defendant published the letter to a third party by retaining it as a public record, rather than by communicating the claimed defamatory material to a third party, and the fact that defendant provided a copy of the letter to plaintiffs in response to public records request is insufficient to show publication.

**Statute of repose.** *Jones v. Durrani*, 2020-Ohio-5607 | 1st Appellate District | 12/9/20 In plaintiffs medical malpractice action against defendant-surgeon following unsuccessful treatment, trial court erred in dismissing complaint as outside the medical malpractice statute of repose where R.C. 2305.15(A) savings statute allows the timely filed original complaint to be voluntarily dismissed under Civ.R. 41(A) and then re-filed within one year, even though the re-filed complaint was outside the repose period.

**Wrongful imprisonment.** *Lemons v. State*, 2020-Ohio-5619 | 8th Appellate District | 12/10/20 In plaintiff's wrongful imprisonment action for time spent in prison for murder conviction before new exculpatory evidence led to a new trial and judgment of acquittal due to insufficient evidence, summary judgment in favor of plaintiff was not error where amendments to R.C. 2743.48, retroactively applied, did not require plaintiff to prove actual innocence because his release was the result of an error in procedure involving a Brady violation, and the Brady violation was already litigated and determined to be material.

**False imprisonment.** *Jordan v. Giant Eagle Supermarket*, 2020-Ohio-5622 | 8th Appellate District | 12/10/20 In plaintiff's false imprisonment action against defendant-supermarket for being detained and accused of theft on two occasions, trial court did not err in granting defendant's motion for judgment on the pleadings where plaintiff failed to allege or sufficiently plead a claim that defendant's employees either requested plaintiff be detained or effectuated the detention during the incidents.

**Evidence.** *Alonso v. Thomas*, 2020-Ohio-6660 | 9th Appellate District | 12/14/20 In plaintiff-client's legal malpractice action in which plaintiff's expert witness testified about the duration and amount of spousal support damages, trial court erred in denying defendant-attorney's motion to strike expert's testimony, to refuse to give a curative instruction and to allow testimony of an expert witness to stand and be used by plaintiff in

closing argument since expert's opinions were not contained in his report and thus were not admissible under local rule, and the matter is remanded for a new trial on damages; the lack of specificity of defendant's initial objection to expert's testimony was also discussed.

**Reconsideration.** *Appollini v. Michael*, 2020-Ohio-6963 | 7th Appellate District | 12/14/20 In plaintiff's replevin action to recover boat she held title to and had stored with car dealership which sold boat to defendant, resulting in judgment for plaintiff, defendant's application for reconsideration is denied since instant court of appeals did consider whether car dealership was a merchant dealing in sale of watercraft under R.C. 1302.01(A)(5) and concluded that it was not a watercraft merchant, and court also considered defendant's claim of equitable estoppel and rejected it because defendant did not change his position to his detriment based on plaintiff's statement or action.

**Disclosure of medical information.** *Menorah Park Ctr. for Senior Living v. Rolston*, 2020-Ohio-6658 | Supreme Court of Ohio | 12/15/20 In senior living center's action to recover debt related to health care services provided to patient, judgment for patient on her counterclaim asserting a HIPAA violation is reversed and remanded since a medical provider may disclose a limited amount of a patient's medical information to further its efforts to collect unpaid bills from the patient for medical services, and center did limit its disclosure of patient's medical information in its complaint, Biddle.

**Medical malpractice.** *Moore v. Mt. Carmel Health Sys.*, 2020-Ohio-6695 | 10th Appellate District | 12/15/20 In patient's conservator's medical malpractice action in which savings statute could not be applied to allow physician to be added as defendant outside the limitations period, summary judgment in favor of medical practice was not error where respondeat superior does not apply because physician was not a party to the action, and he was an owner of the practice rather than a traditional employee for which the practice might be vicariously liable.

**Negligence.** *McDougald v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-6697 | 10th Appellate District | 12/15/20 In inmate's action in court of claims alleging prejudice in a related action resulting from state department's negligence in failing to maintain medical treatment video where treatment resulted from use of force, prompting inmate to file a use-of-force complaint with institution, court did not err in granting department's motion for summary judgment since inmate did not timely file action pursuant to R.C. 2743.16(A), which requires actions to be filed no more than two years statute after the date of accrual of the cause of action.

**Negligence.** *Chapman v. Gardner*, 2020-Ohio-6717 | 1st Appellate District | 12/16/20 In negligence action arising from traffic accident in which elementary school child was hit by driver's car when child was crossing street at intersection, summary judgment for driver was not error where driver was driving within speed limit, child darted into road, driver took proper action by slamming on her brakes, and collision could not have been avoided.

**Defamation.** *Hamilton v. Gannett Co., Inc.*, 2020-Ohio-6771 | 5th Appellate District | 12/17/20 Dismissal under Civ. R. 12(b)(6) of plaintiff's defamation action against newspaper was not error where plaintiff alleged that statements in

two articles, taken together, made the statement that he was responsible for harming his daughter, since the first statement, taken alone, was not defamatory, the second statement, taken alone or with first statement, could be construed to have two meanings and under the innocent construction rule the innocent meaning must be adopted, and the articles were not of and concerning plaintiff.

**Medical malpractice.** *Wilson v. Durrani*, 2020-Ohio-6827 | Supreme Court of Ohio | 12/23/20 In related medical malpractice actions, court of appeals erred in ruling that the saving statute, R.C. 2305.19(A), allowed plaintiffs to re-file previously dismissed claims under Civ.R. 41(A)(1) (a) after the expiration of the statute of repose since R.C. 2305.113(C) clearly and unambiguously prevents the commencement of a medical claim more than four years after the occurrence of alleged malpractice, and that statute precludes commencement of an action, pursuant to the saving statute, of a claim that previously failed otherwise than on the merits.

**Interference with expectancy of inheritance.** *Simon v. Aulino*, 2020-Ohio-6962 | 4th Appellate District | 12/23/20 In a dispute between sisters over inheritance left by father, trial court did not err in denying defendant's motions for directed verdict and JNOV on plaintiff's claim for intentional interference with expectancy of inheritance where father's will divided estate equally between sisters, but prior to his death father was in weakened state, and evidence shows that transfer on death conveyances to defendant were the result of undue influence and that father did not intend or remember transfers, effectively leaving everything to defendant.

**Medical malpractice.** *Squiric v. Southwoods Surgical Hosp.*, 2020-Ohio-7026 | 7th Appellate District | 12/23/20 In plaintiff's medical malpractice action against physician and hospital asserting that surgery was performed without informed consent, trial court erred in denying hospital's motion for protective order and granting plaintiff's access to documents where the case-by-surgeon and physician utilization reports sought were created by professional peer review committee pursuant to R.C. 2305.252 and are protected by privilege, in camera review of reports was not required because contents were not in dispute, and investigation of plaintiff's incident was not required for privilege to apply.

**Wrongful imprisonment.** *Ellis v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-6877 | 10th Appellate District | 12/24/20 In wrongful imprisonment action asserting that trial court failed to include a notification in its judgment entries about what would happen if plaintiff violated post-release control, summary judgment for state department was not error on reasoning that plaintiff was confined according to the terms of sentencing order, the order was not void ab initio (due to a want of jurisdiction over the person or action), and the order was not found to be void; contraction of definition of what constitutes a void judgment in a criminal case is discussed, Harper.

**Defamation.** *Anderson v. WBNS-TV, Inc.*, 2020-Ohio-6933 | 10th Appellate District | 12/29/20 In plaintiffs' defamation action against defendant-TV station for publishing a headline about a robbery followed by a photograph in which plaintiffs appeared, trial court erred in granting defendant summary judgment since the court did not apply the Lansdowne fault standard to determine whether defendant acted reasonably in

attempting to discover the truth of its publication, and although the story was based on a law enforcement source, defendant altered the media information report to identify plaintiffs as robbers rather than merely suspects.

**Abuse of process.** *Knapp v. Husa*, 2020-Ohio-6986 | 9th Appellate District | 12/31/20 In a boat purchaser's breach of contract action against seller for prior damage to boat which was discovered when he sold boat to third party, trial court did not err in granting summary judgment for purchaser on seller's counterclaim for abuse of process where, although purchaser incorrectly attempted service by publication in county where seller resided and did business rather than the alleged venue, seller failed to show that the proceeding was perverted for ulterior purpose of damaging seller in his business.

**Nuisance.** *Teeter v. Ball Jar Corp.*, 2020-Ohio-6997 | 5th Appellate District | 12/31/20 In nuisance action by plaintiff-homeowner alleging that defendant-company's expansion construction caused flooding and water damage to his property, judgment for defendant based on jury verdict and denial of plaintiff's motion for JNOV were not error since, inter alia, city engineer testified that the stormwater management plan of defendant was reasonable and very conservative and environmental engineer expert stated that defendant's use of property and construction of stormwater system were reasonable and had a minimal adverse impact on plaintiff's property.

**Medical malpractice.** *Beranek v. Shope*, 2020-Ohio-7024 | 7th Appellate District | 12/31/20 In plaintiffs' medical malpractice action against surgeon asserting breach of standard of care when surgery led to additional treatments, judgment in favor of surgeon is affirmed where any error in instructing jury on mitigation of damages was harmless because it did not impact jury's finding of no breach of standard of care, the admission of consent forms was not an issue for jury and was at most harmless error, and issue of alternative causes would only be reached if there was a finding of breach of standard of care.

**Negligent credentialing.** *Walling v. Brenya*, 2021-Ohio-29 | 6th Appellate District | 1/8/21 In estate administrator's negligent credentialing action against hospital following settlement of underlying medical malpractice claim for negligent treatment of decedent, summary judgment in favor of hospital was not error where, although physician conceded elements of medical malpractice on the record during underlying trial, settlement agreement did not stipulate that decedent's injury was caused by medical malpractice, and because there was no determination of malpractice in the underlying action, the credentialing claim failed.

**Evidence.** *Perini v. Hillman*, 2021-Ohio-20 | 5th Appellate District | 1/8/21 In plaintiff's action against defendants-neighbor and tree service for trimming and injuring trees growing on her property, trial court erred in granting summary judgment in favor of defendants on reasoning that plaintiff failed to file expert reports since plaintiff presented evidence demonstrating multiple restoration cost estimates, and cost and necessity of replacing run-of-the-mill trees is within common knowledge and does not require landscaper's testimony.

**Invasion of privacy.** *Kim v. Randal Lowry & Assocs.*, 2021-Ohio-51 | 9th Appellate District | 1/13/21 In plaintiff's action for, inter alia, invasion of privacy against ex-spouse's divorce counsel for filing unredacted subpoenas publicizing certain

personal identifiers in post-divorce proceedings, summary judgment in favor of counsel was not error where counsel's failure to follow court's local rules or rules of superintendence is insufficient to overcome qualified immunity, plaintiff failed to present evidence to show that counsel acted with malice, and counsel was willing to request the court to seal the record as to unredacted subpoenas.

**Medical malpractice.** *Wiltz v. Cleveland Clinic*, 2021-Ohio-62 | 8th Appellate District | 1/14/21 Dismissal of patient's medical malpractice claims alleging failure to diagnose and denial of her motion for leave to amend her complaint were not error since complaint was filed beyond the statute of limitations because notifying patient that her test results suggested that she might have cancer constituted a cognizable event, and the uncertainty of a correct diagnosis does not diminish one's knowledge that the diagnosis has been suggested.

**Fraud.** *Windsor Med. Ctr., Inc. v. Time Warner Cable, Inc.*, 2021-Ohio-158 | 5th Appellate District | 1/20/21 In customer's fraud action against provider of telephone, internet and cable television services for repeated billing for an international service that was not requested and for an internet service that did not exist, and also for fraudulent representations that it would resolve the billing issues, resulting in a jury verdict in favor of the customer, the trial court did not err in denying provider's motion for JNOV since customer demonstrated that the fraud claims did not arise out of the parties' contracts but went beyond and were independent of those agreements, and the economic loss doctrine did not apply.

**Discovery.** *Barrow v. Living Word Dayton*, 2021-Ohio-141 | 2nd Appellate District | 1/22/21 In alleged author's action against his former church, claiming a number of torts, trial court did not err in ordering author and his attorney to pay attorney fees to church as a discovery sanction where attorney willfully failed to comply with agreed-discovery order when he refused to review emails for privilege, the failure to comply was not substantially justified, and making author and attorney jointly and severally liable for attorney fees was allowed under Civ.R. 37(B)(3), even though contempt order did not extend to attorney.

## Transportation Law

**Federal pre-emption.** *C&D Trading, Inc. v. Total Quality Logistics, L.L.C.*, 2020-Ohio-6905 | 12th Appellate District | 12/28/20 In plaintiff-grocery reseller's breach of contract action against defendant-freight broker for loss sustained when its perishable goods were rejected by supermarket as too warm after transport to their locations, trial court erred in granting defendant's motion to dismiss on reasoning that pre-emption under 49 U.S.C. Sec. 14501(c)(1) applied since the law pre-empts state-imposed obligations, but not self-imposed obligations, and therefore the breach of contract claim is not subject to pre-emption.

## Workers' Compensation

**Amended claim.** *Santarelli v. Gen. Motors CLCO-Mansfield*, 2020-Ohio-5341 | 5th Appellate District | 11/18/20 In workers' compensation claim in which employee filed a C-86 motion to amend claim to include additional allowance of a closed head injury nearly 10 years after the incident, summary judgment for employer was not error where employee only mentioned door striking his head when describing the incident and did not

disclose what, if any, injuries he sustained from the door hitting his head, and this does not provide sufficient notice for injuries to the head, R.C. 4123.84 and 4123.52.

**Vision loss.** *State ex rel. Bowman v. Indus. Comm.*, 2020-Ohio-5343 | 10th Appellate District | 11/19/20 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 of 70 percent bilateral loss of vision under R.C. 4123.57(B) is granted where magistrate found, inter alia, that 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.

**Relief fund.** *State ex rel. Manor Care, Inc. v. Bur. of Workers' Comp.*, 2020-Ohio-5373 | Supreme Court of Ohio | 11/25/20 In employer's mandamus action for restitution from bureau's relief fund for lump-sum permanent disability (PTD) compensation paid directly to injured workers to make up for previous underpayments, arguing that its underpayment of compensation should be offset by bureau's overpayment of relief-fund benefits for which employer had reimbursed bureau, denial of writ was not error since R.C. 4123.412, governing disbursements from relief fund, does not provide for payments to employers, employer cites no authority for bureau to offset incorrect PTD payments from relief fund, and employer has other avenues of redress, R.C. 4123.411.

**Jury instruction.** *Towles v. MillerCoors, L.L.C.*, 2021-Ohio-34 | 10th Appellate District | 1/11/21 In employee's action for workers' compensation benefits for injuries sustained on the job, trial court did not err in giving the eggshell skull rule instruction relating to injuries to a person who has a pre-existing condition where instruction was a proper statement of law and was not inconsistent with any other instruction, the instruction had not been legislatively overruled, injuries were proximately caused by work incident, and employee was not required to prove that his injuries did not develop gradually over time.

**Jurisdiction.** *Mahle Behr Dayton, L.L.C. v. Ohio Bur. of Workers' Comp.*, 2021-Ohio-145 | 2nd Appellate District | 1/22/21 Dismissal for lack of jurisdiction of employers' claims for unjust enrichment and equal protection violation against bureau of workers' compensation, asserting that rebates for surplus premiums should have been larger, was not error since employers sought reimbursement for excess premiums which were paid into the general fund and were not traceable, making the claims legal rather than equitable, and necessarily brought in the court of claims, and plaintiffs' equal-protection claim was not a separate constitutional claim, so that claim is also properly brought in the court of claims, R.C. 2743.02.