OHIO STATE BAR ASSOCIATION REPORT

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Ohio case law summaries from February 19 – May 15

In Case You Missed It The following are summaries of cases decided by Ohio courts between Feb. 19, 2022 – May 15, 2022. To read the decisions in their entirety, please visit ohiobar.org/greenbook and enter the case name in the search field.

Administrative and Regulatory

Appeal/Attorney fees. Wright v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-1046 | 9th Appellate District | 3/30/22 In administrative appeal of agency's denial of appellant's request for Medicaid waiver services to pay for modifications to van to make it wheelchair accessible, trial court erred in awarding to appellant attorney fees resulting from multiple appeals since R.C. 2335.39(F)(3)(c) unambiguously provides that attorney fees are not awarded in connection with appeal under R.C. 5101.35, and appellant did not raise the issue of trial court's inherent authority to grant attorney fees at trial court level and cannot do so for first time on appeal.

Nuisance/Administrative remedies/ Injunction. Horvath v. Barberton Bd. of Bldg. & Zoning Appeals | 2022-Ohio-1302 | 9th Appellate District | 4/20/22 In homeowner's administrative appeal of city's intent to condemn and demolish house if he failed to comply with maintenance code after house suffered damage from tornado, trial court did not err in denying homeowner's motion for a preliminary injunction since homeowner failed to exhaust administrative remedies where his appeal to the board of zoning appeals was untimely, and his arguments challenge the condemnation notice, rather than the constitutionality of the ordinances, so the doctrine of exhaustion of administrative remedies applies.

Medical license restriction. T.E. v. State Med. Bd. | 2022-Ohio-1471 | 10th Appellate District | 5/3/22 In physician's administrative appeal of medical board's order limiting and restricting his medical license based on his health issues, trial court did not err in affirming board's decision where the board is permitted pursuant to R.C. 4731.22(B) to limit license for impairment in some areas of practice and not just for complete inability to practice, and although board's expert was not of the same medical specialty as physician, his conclusions regarding physician's ability to perform invasive procedures was supported by communications from other specialists.

Banking and Commercial

Depositors/Voting rights. Barack v. Belmont Sav. Bank | 2022-Ohio-678 | 7th Appellate District | 3/10/22 In action against bank by depositors, who had voting rights proportional to their deposits, alleging, inter alia, that bank violated its corporate constitution by limiting depositors' voting rights, summary judgment in favor of bank was error since bank failed to publish notice of its meeting to amend bylaws, as required by its constitution, did not serve notice of the meeting on any depositor personally, and failed to prove the defense of laches because it presented no evidence as to the unreasonableness of depositors' delay or prejudice caused by delay in filing claims.

Cognovit note/Necessary language. Home Loan Savs. Bank v. Jahweh, L.L.C. | 2022-Ohio-1118 | 5th Appellate District | 3/24/22 In plaintiff-bank's action against defendant-business, resulting in a judgment on a purported cognovit note, trial court erred in denying defendant's motion to vacate judgment, treated as a Civ. R. 60(B) motion, where defendant timely filed the motion and there was a question whether the document was converted into cognovit note by the addition of necessary language or whether checkboxes adjacent to required language must be checked to activate language, R.C. 2323.13.

Unjust enrichment/Trust fees. Helton v. Fifth Third Bank | 2022-Ohio-1023 | 1st Appellate District | 3/30/22 In beneficiaries' unjust enrichment action against bank-trustee for improperly taking excessive fees from trust, summary judgment in favor of bank was not error where beneficiaries did not confer a benefit on bank because bank took its fees from income earned by trusts and not from the principal; even though summary judgment to bank on unjust enrichment claim was previously reversed, the law-of-the-case doctrine does not apply because the reversal was not based on the merits of the claim.

Debt collection/Evidence. Discover Bank v. Tudor | 2022-Ohio-1134 | 3rd Appellate District | 4/4/22 In bank's action to recover money owed by borrower on loan, judgment for bank was not error since complaint that had been voluntarily dismissed, Civ.R. 41(A)(1), was re-filed within the statute of limitations, bank's witness' testimony was properly admitted since evidence of regularly collected business records are not excluded by the hearsay rule, Evid.R. 803(6), and borrower failed to provide any evidence to support his claim that he had reached an accord and satisfaction with the bank.

Cognovit notes/Commercial purpose. SHJ Co. v. Avani Hospitality & Fin., L.L.C. | 2022-Ohio-1173 | 8th Appellate District | 4/7/22 In plaintiff-lending company's action against defendant-business for default on loans, resulting in cognovit judgment against them, trial court did not err in denying defendants' Civ.R. 60(B) motion for relief from judgment since the cognovit notes unambiguously provide that they are commercial loans for business purposes only and did not arise out of consumer transactions, plaintiff's assertions that proceeds of loans were used for consumer purposes were not supported by the evidence, use of proceeds did not change the type or purpose of the loans, and R.C. 2313.13(E) does not provide for a hearing to determine the nature of notes.

Banking and Commercial (Cont.)

Loan default. Crown Asset Mgt., L.L.C. v. Gaynor | 2022-Ohio-1468 | 1st Appellate District | 5/4/22 In plaintiff-loan assignee's action against defendant-borrower for default on loan, trial court did not err in granting plaintiff's motion for summary judgment where defendant effectively admitted to plaintiff's assertions in its complaint pursuant to Civ.R. 8(D), he failed to object to magistrate's decision and therefore waived all but plain error under Civ.R. 53(D), he failed to advance plain-error argument on appeal, and none of his assignments of error have merit.

Construction

Contract/Vacated opinion. Broadway Concrete Invests., L.L.C. v. Masonry Contracting Corp. | 2022-Ohio-530 | 8th Appellate District | 2/24/22 In a breach of contract action, in which the court of appeals' original opinion has been vacated, where plaintiff claimed that defendant did not make full payment for plaintiff's services, the trial court erred in ruling in favor of plaintiff since the purchase order constituted the entire contract, and the court improperly incorporated terms from plaintiff's quotation into the contract and then applied the evidence presented at trial to those terms; the matter is remanded for further proceedings on the breach-of-contract claim consistent with the court's opinion.

Contract/Arbitration. Zeck v. Smith Custom Homes & Design, L.L.C. | 2022-Ohio-622 | 8th Appellate District | 3/3/22 In homeowners' breach of contract action against construction company for failure to meet substantial-completion date, resulting in submission of dispute to arbitrator who ruled in favor of company, the trial court did not err in denying homeowners' application to vacate the arbitration award since homeowners breached the contract by not paying amount owed and by not permitting company to perform further work, and because agreement was not terminated pursuant to contract's termination clause which would require only payment for value of completed work, overhead and profit were appropriately added and not double counted, R.C. 2711.10(D).

Contract/Arbitration. Starr Constr. & Demo v. D.A. Bentley Constr. | 2022-Ohio-1122 | 7th Appellate District | 3/31/22 In plaintiff-subcontractor's breach of contract action against defendant-contractor for failure to pay for work performed, trial court erred in denying defendant's motion to stay pending arbitration where, although defendant did not sign the contract containing the arbitration clause, the signature of the party seeking to enforce it is not required under R.C. 1335.05, and plaintiff used the written contract containing the arbitration clause in pleadings and admitted that the parties entered into the contract, R.C. 2711.02.

Contract/Overhead/Profit. Hanuman Chalisa, L.L.C. v. Bomar Contracting, Inc. | 2022-Ohio-1111 | 10th Appellate District | 3/31/22 In owner's breach of construction contract action against contractor for alleged deficiencies and delays in work, judgment in favor of contractor was error where parties' agreement did not specify a greater overhead and profit margin for work executed pursuant to a change directive, contractor's bookkeeper introduced a different margin for overhead and profit, and there was no reason to look beyond the written agreement to determine reasonable overhead and profit.

Contracts

Civil litigation advance/Attorney's acknowledgement. Estate of Campbell v. US Claims OPO, L.L.C. | 2022-Ohio-711 | 5th Appellate District | 3/10/22 In a declaratory action filed by plaintiff-attorney for estate of drowning victim, whose estate entered into a settlement in underlying wrongful death action, where attorney sought a declaration that she was a non-party and could not be compelled into arbitration with defendant-company with which decedent's mother entered into an agreement to accept a non-recourse civil litigation advance in exchange for potential proceeds from the subsequently-settled wrongful death litigation, the trial court did not err in granting defendant's motion to dismiss where plaintiff signed acknowledgement by which she agreed to be bound by terms of the civil litigation advance agreement, and even if she was not a party to agreement, she was contractually bound to arbitration under acknowledgment.

Breach/Interest/Attorney fees. Classic Comfort Heating & Supply, L.L.C. v. Miller | 2022-Ohio-855 | 2nd Appellate District | 3/18/22 In plaintiff-seller's breach of contract and related claims action against defendant-buyer for dispute over payment for purchase of heating system where defendant was found liable under the contract, trial court erred in denying plaintiff's motions for prejudgment interest and attorney fees since award of prejudgment interest is required under R.C. 1343.03(A), and award of attorney fees was appropriate under R.C. 2323.51 because there was evidence that defendant was untruthful in counterclaims for breach of contract and fraudulent misrepresentation, and defendant could not identify any deceptive practice by plaintiff in her assertion of unconscionability.

Breach. Nighswander v. Waterstone LSP, L.L.C. | 2022-Ohio-971 | 6th Appellate District | 3/25/22 In plaintiff-shareholder's breach of contract action against defendant-loan servicing company for failure to pay monies allegedly owed under parties' agreement, trial court erred in granting defendant's motion for summary judgment since the agreement is ambiguous and subject to more than one reasonable interpretation, and a question remains as to how defendant's work on paycheck protection loans should be characterized under the parties' agreement.

Real property/Personal property. Am. Steel City Indus. Leasing, Inc. v. Bloom Land Co., L.L.C. | 2022-Ohio-1004 | 11th Appellate District | 3/28/22 In dispute whether sale of property included machinery on the premises, trial court did not err in granting summary judgment to purchaser since the contract provided for the sale of the real property and equipment, and when read as a whole, the contract does not demonstrate an intent to change the ordinary meaning of the term equipment to exclude the machinery, and this determination is supported by the contract provision that purchaser is entitled to receive rents for the lease of the machinery.

Settlement/Indemnification/Notice. Wildcat Drilling, L.L.C. v. Discovery Oil & Gas, L.L.C. | 2022-Ohio-1125 | 7th Appellate District | 3/31/22 In driller's breach of contract action against oil company for failure to pay invoice where oil company counterclaimed for indemnification for a fine it paid to state department, without notifying driller, to settle an environmental violation, trial court did not err in granting driller's motion for summary judgment as to oil company's indemnification claim since the language of the parties' contract does not clearly indicate an intent to abrogate the common law requirement that oil company give notice to driller before entering settlement without driller's involvement.

Breach/Pleading. Prime Invests., L.L.C. v. Altimate Care, L.L.C. | 2022-Ohio-1181 | 10th Appellate District | 4/7/22 In plaintiff-broker's breach of contract and unjust enrichment action against defendants-business and officers for refusal to pay agreed commission for work in selling business, trial court erred in granting defendants' Civ.R. 12(B)(6) motion to dismiss where, although plaintiff did not identify the ultimate buyer in the complaint, that information would be readily available through the discovery process, and the buyer signed a non-disclosure agreement within the contractual selling period and subsequently purchased the business within the specified period following the selling period.

Breach/Limitations. Tabbaa v. Nouraldin | 2022-Ohio-1172 | 8th Appellate District | 4/7/22 In plaintiff's action against defendants-former business partners alleging breach of contract for failure to return business interests that he temporarily transferred to partners during litigation with a third party, summary judgment in favor of defendants was error where plaintiff attached the verified copy of parties' written contract in opposition to summary judgment, and plaintiff's claims based on a written contract accrued within the statute of limitations in former R.C. 2305.06; also, information as to accrual of claim based on an oral contract was insufficient for the trial court to determine timeliness under R.C. 2305.07.

Breach/Pleading. Fox Consulting Group, Inc. v. Mailing Servs. of Pittsburgh, Inc. | 2022-Ohio-1215 | 1st Appellate District | 4/13/22 In telecom consultant's breach of contract action against client for utilizing third party to implement cost-saving recommendations in violation of the parties' contract, trial court erred in granting client's Civ.R. 12(B)(6) motion to dismiss since consultant sufficiently stated a cause of action if its allegations were accepted as true, including its allegation that client breached the contract by choosing to negotiate alternate pricing for telecom services from different vendors.

Settlement proceeds assignment. Blue Ash Auto Body, Inc. v. Frank | 2022-Ohio-1292 | 1st Appellate District | 4/20/22 In auto body shop and vehicle owner's action against at-fault driver to recover unpaid costs for repair of vehicle, summary judgment in favor of driver was not error since vehicle owner could not assign to shop his right to proceeds of settlement because the right to proceeds did not exist at the time of the assignment, and owner never established damages and was unaware that there was an outstanding balance or that the shop was pursuing a claim.

Settlement/Necessary parties. Sycamore Twp. v. Carr | 2022-Ohio-1337 | 1st Appellate District | 4/22/22 In township's action against property owner-political candidate for displaying campaign signs in violation of zoning code, resulting in a settlement agreement, trial court did not err in granting township's motion to enforce the agreement where candidate failed to advance argument in the trial court that his former attorneys should have been joined as necessary parties, and even if he had preserved that argument, the attorneys were not parties to the settlement agreement and therefore could not have breached an obligation to perform.

Terms/Breach. Digitalight Sys., Inc. v. Cleveland Clinic Found. | 2022-Ohio-1400 | 8th Appellate District | 4/28/22 In plaintiff-equipment provider's action against defendant-clinic alleging, inter alia, breach of contract for defendant's failure to accept and pay for shipments of products after order had been cancelled, summary judgment in favor of defendant was not error since plaintiff donated the first shipment and defendant's offer to pay for it lacked consideration and was later withdrawn, plaintiff failed to deliver products before defendant issued written notice that it was cancelling order, and additional delivery terms in plaintiff's communication did not become part of parties' contract, R.C. 1302.10.

Breach/Nursing care. Laurels of Huber Hts. v. Taylor | 2022-Ohio-1425 | 2nd Appellate District | 4/29/22 In nursing facility's breach of contract action against resident's spouse for failure to pay resident's balance due, trial court erred in granting spouse's motion for summary judgment since spouse agreed to pay monthly amount towards past due balance in exchange for facility's forbearance in pursuing collections, giving facility a valid legal basis to hold spouse personally liable, and spouse failed to show an all-encompassing prohibition against facility's contracting with third party to accept liability on resident's bill.

Settlement agreement. J. Griffin Ricker Assocs., L.L.C. v. Well | 2022-Ohio-1470 | 10th Appellate District | 5/3/22 In plaintiff-business' action against defendant-consultant alleging, inter alia, trade secrets misappropriation, resulting in a settlement agreement which was later disputed, trial court did not err in enforcing parties' agreement where plaintiff failed to provide a transcript of hearing pursuant to App.R. 9(B)(1), the plain language of the settlement agreement sufficiently demonstrated mutual assent to form a binding agreement, and plaintiff's dissatisfaction with defendant's performance of terms of agreement was not evidence that defendant breached the settlement agreement.

Criminal

Mandamus. State ex rel. Harris v. Hamilton Cty. Clerk of Courts | 2022-Ohio-477 | Supreme Court of Ohio | 2/22/22 In a pro se mandamus action to compel the trial court in underlying criminal action to vacate relator's sentence and to re-sentence him and for the county clerk of courts to return funds paid as a fine and court costs, the court of appeals did not err in dismissing action since relator challenges the trial court's exercise of jurisdiction, not personal or subject-matter jurisdiction in his criminal case because, even

if the challenge were valid, it would render relator's sentence only voidable, not void, and thus appellant is barred by res judicata from challenging any sentencing error by a mandamus action.

Habeas corpus. Davis v. Hill | 2022-Ohio-485 | Supreme Court of Ohio | 2/23/22 In inmate's appeal of the court of appeals' dismissal of his pro se habeas corpus petition against warden, judgment is affirmed since relator failed to state a valid habeas claim because his allegations that he did not receive a fair trial and that the trial court improperly denied his new-trial motion do not support the claim that the trial court lacked subject-matter jurisdiction and, also, relator's maximum sentence has not expired.

Habeas corpus. Boler v. Hill | 2022-Ohio-507 | Supreme Court of Ohio | 2/24/22 In inmate's 2021 pro se petition for habeas corpus against warden, the court of appeals did not err in dismissing the petition on the basis of res judicata since, inter alia, a 2019 petition for habeas corpus had been denied and res judicata precludes successive habeas petitions, even if the grounds for relief are distinct, and relator has made no showing that his conviction was void.

New trial. State v. Johnson | 2022-Ohio-523 | 8th Appellate District | 2/24/22 Following a 2001 bench conviction of, inter alia, four counts of aggravated robbery, in which the convictions were affirmed, but case was remanded for re-sentencing and subsequent denial of application for DNA testing, denial of 2020 motion for leave to file a motion for new trial was error where another person confessed to the crimes and appellant was unavoidably prevented from discovering that confession at the time of trial, as well as issues involving the state's inability to locate the physical evidence in this case that had been in its possession.

Ineffective assistance. State v. Moore | 2022-Ohio-522 | 8th Appellate District | 2/24/22 Following a 2018 conviction by plea of involuntary manslaughter and sexual battery in two separate cases involving a different victim in each case and grant by the court of appeals of a 2020 motion for leave to file a delayed appeal, defense counsel provided ineffective assistance by not raising the statute of limitations since the record does not support that the state met its burden that it used reasonable diligence in ascertaining appellant's identity at the time of filing the action since it did not act until a DNA match identified appellant in 2018, 23 years after the alleged act, even though appellant had been identified as a suspect prior to the expiration of the statute of limitations.

Jury instruction. State v. Wolters | 2022-Ohio-538 | 5th Appellate District | 2/24/22 In a conviction of sex offenses involving defendant's five year-old step-granddaughter, the trial court did not err by giving a jury instruction on consciousness of guilt where record reflects appellant told law enforcement he would turn himself in the day after he was contacted, but he failed to do so for an additional week where the jury heard defendant's explanation that he had a work obligation and the trial court accurately instructed the jury they should not consider the evidence as awareness of guilt if it found some other motive than guilt prompted defendant to fail to turn himself in or, if it was unable to determine his motivation, they should not consider this evidence as consciousness or awareness of guilt.

Search. State v. Cody | 2022-Ohio-544 | 2nd Appellate District | 2/25/22 In a conviction by plea of drug possession, the trial court did not err in denying a motion to suppress statements made to officer during traffic stop after an undercover officer had observed what appeared to be a drug transaction with persons in the vehicle that defendant was in since appellant was not in custody when he told officer where drugs were located in car, and also the drug concealed in appellant's pants was admissible, even if appellant had been in custody since it would have been inevitably discovered during a search incident to his arrest for the drugs found in the car.

Prosecutorial misconduct. State v. Sellers | 2022-Ohio-581 | 11th Appellate District | 2/28/22 In a conviction of seven counts of rape of a minor, prosecutor did not engage in misconduct during voir dire by using phrase "firmly convinced" to describe "beyond a reasonable doubt" since it is consistent with the statutory language in R.C. 2901.05(E) providing "'[r]easonable doubt is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge,"' and the trial court gave a thorough instruction of reasonable doubt.

Mandamus/Prohibition. State ex rel. McKenney v. Jones | 2022-Ohio-583 | Supreme Court of Ohio | 2/28/22 In action by municipal court judges for writs of prohibition and mandamus against respondents county court of common pleas and its administrative judge, challenging respondents' appointment of counsel for indigent criminal defendants, writs are denied since, in challenge to respondents' agreement for the appointment of counsel who appear in municipal court before indigent defendants are bound over to the common pleas court on a felony charge, the common pleas court judges are not parties to the agreement, and relators lacked standing to challenge the appointment of counsel in the common pleas court since the aggrieved parties are the indigent defendants or the unpaid attorneys.

Search. State v. Bergk | 2022-Ohio-578 | 5th Appellate District | 2/28/22 In a conviction by plea of aggravated possession of drugs and illegal use or possession of drug paraphernalia, denial of motion to suppress was not error where officer had reasonable suspicion of a traffic violation to make a stop and, while officer was waiting for appellant driver to provide proof of insurance, appellant consented to officer's request to search vehicle since nothing in the record suggests the officer unduly delayed or extended the duration of the traffic stop to perform the search.

Sentencing. State v. Eitzman | 2022-Ohio-574 | 3rd Appellate District | 2/28/22 In a bench conviction of second-degree felonious assault with a deadly weapon, R.C. 2903.11(A)(2), arising out of a collision of appellant's vehicle with victim's vehicle, the trial court erred by indicating in its judgment entry that appellant was ineligible for earned credit under R.C. 2967.193 since that is inconsistent with the statutory standards in that provision; portion of sentence inconsistent with R.C. 2967.193 is vacated and matter is remanded for the limited purpose of correcting the judgment entry.

Miranda. State v. James | 2022-Ohio-592 | 5th Appellate District | 2/28/22 In a conviction by plea of two counts of gross sexual imposition, R.C. 2907.05(A)(4), denial of motion to suppress was not error where two officers interviewed appellant in his hospital room after his hospitalization for self-inflicted injuries since appellant was not in custody when he agreed to speak with officers, not formally restrained and remained at the hospital for treatment purposes following the interview, and a reasonable person in appellant's position would not believe that he or she was in custody, and thus no Miranda warnings were required.

Drug possession. State v. Davis | 2022-Ohio-577 | 5th Appellate District | 2/28/22 Conviction of possession of cocaine, R.C. 2925.11(A), was not against the weight of evidence since appellant's claim that his DNA was not found on the plastic baggies containing cocaine in the vehicle that he was driving and that the passenger had the opportunity to deposit the cocaine and paraphernalia in the vehicle is not controlling since jury could infer appellant's knowledge of the presence of the cocaine based on his deceptive behaviors by lying to the officer during the traffic stop about his identity and ownership of the vehicle, drugs were found within appellant's search, and an officer saw a baggie in plain sight in the vehicle.

Sealing. State v. Young | 2022-Ohio-593 | 5th Appellate District | 3/1/22 Denial of 2021 motion to seal record of a 1993 conviction of first-degree misdemeanor attempted drug abuse, R.C. 2923.02(A), was error since appellant was an eligible offender under R.C. 2953.31(A)(1) and the fact that appellant had also been charged with, and pled guilty to, a first-degree misdemeanor OVI offense arising out of the same arrest in a municipal court action did not change the result since the set of facts for each charge were separate and distinct.

Search. State v. Williams | 2022-Ohio-603 | 9th Appellate District | 3/2/22 In a conviction by plea of felony drug offenses, denial of motion to suppress was not error since the trial court did not misapply the collective knowledge doctrine because of the state not calling the first responding officers as witnesses, nor did the trial court wrongly determine that the arresting officer possessed reasonable suspicion that appellant was engaged in criminal activity where the state demonstrated that the facts provided by an experienced undercover officer precipitating the dispatch and who testified at trial justified his reasonable suspicion of criminal activity.

Court costs. State v. Freeman | 2022-Ohio-674 | 4th Appellate District | 3/2/22 Following a 2017 conviction of felonious assault and domestic violence, denial of 2021 motion to allow appellant to perform community service in lieu of paying court costs was not error since, under R.C. 2947.23(B), a trial judge has a duty to hold a hearing to determine whether to impose community service, but only if the judge has reason to believe that a defendant has failed to timely make payments in accordance with the approved schedule and, since appellant has been making payments, the trial court was not required to hold a hearing.

Obstructing official business. State v. Brantley | 2022-Ohio-597 | 1st Appellate District | 3/2/22 Bench conviction of obstructing official business, R.C. 2921.31(A), met the sufficiency and weight of evidence standards where officers' testimony and body camera video demonstrated that defendant's conduct obstructed their arrest of a person who had a warrant for his arrest and also obstructed the officers' investigation of an unattended vehicle that was parked with the engine engaged in violation of R.C. 4511.661, officer was privileged to enter the vehicle and remove the key pursuant to R.C. 4549.05, and the trial court did not lose its way in making its credibility determinations.

Evidence. State v. Taylor | 2022-Ohio-614 | 8th Appellate District | 3/3/22 In a conviction of, inter alia, aggravated murder, R.C. 2903.01(B), although the trial court erred by allowing the jury to stack an inference upon an inference in permitting the state to introduce evidence that boots matching those worn by appellant during his interaction with the police prior to the murder were not recovered from his apartment when the police subsequently executed a search warrant and the state then argued that because the boots were never found, he disposed of the boots after the murder to destroy evidence and error was harmless since there was substantial other evidence, including appellant's DNA on victim's clothing.

Joinder. State v. Fields | 2022-Ohio-620 | 8th Appellate District | 3/3/22 In a conviction of, inter alia, aggravated robbery, the trial court did not commit plain error in joining three indictments for trial since each charge involved theft of cigarettes from a truck during a delivery in the same area and could have been charged in a single indictment because the offenses are of a similar character, part of a common scheme or plan, and part of a course of criminal conduct, Crim.R. 8(A) and 13, and appellant failed to demonstrate how he was prejudiced by the trial court not severing them after the charges relating to one indictment were dismissed at the close of the state's case.

Sentencing. State v. Campbell | 2022-Ohio-621 | 8th Appellate District | 3/3/22 In a conviction by plea of, inter alia, four counts of aggravated robbery, challenge to the constitutionality of the imposition of consecutive and concurrent prison sentences totaling eight to ten-and-a-half years pursuant to the Reagan Tokes Act is without merit since the court of appeals in this circuit has upheld the constitutionality of the Act, Delvallie.

Jury. State v. Washington | 2022-Ohio-625 | 5th Appellate District | 3/3/22 In a conviction of multiple counts of rape, the trial court's order that jurors wear face masks during voir dire was not error since it did not prejudicially affect appellant's substantial rights where nothing in the record suggested that the jury's verdict may have been different if appellant could have seen the jurors' full facial expressions during the entire voir dire or trial where prospective jurors during voir dire were brought to the bench and asked questions related to bias and were not masked during that questioning; also discussed, the trial court did not err by not ordering severance.

Plea. State v. Pames | 2022-Ohio-616 | 8th Appellate District | 3/3/22 In a conviction in multiple cases by plea of, inter alia, involuntary manslaughter and two counts of rape, denial of pro se motion made at the sentencing hearing to vacate plea to all but the rape charges was not error where the plea was validly made pursuant to Crim.R. 11 since the fact that appellant claimed to have felt "pressured" to enter a guilty plea is not a sufficient basis to withdraw a plea in the absence of evidence of

coercion where he had freely rejected other plea offers the state had made or that he was coerced in any way by defense counsel or by his father, or that he was promised anything that he did not receive in exchange for his guilty pleas.

Speedy trial. State v. Mughni | 2022-Ohio-626 | 1st Appellate District | 3/4/22 In state's appeal of grant of motion to dismiss for violation of the right to a speedy trial in a prosecution for violation of a protection order, assault and unlawful restraint, judgment is affirmed since an eight-and-a-half-month delay in initiating the prosecution against defendant violated his right to a speedy trial where the state made no effort to locate defendant, defendant timely invoked his right to a speedy trial, and defendant incurred prejudice because of the delay by the city's destruction of the body camera footage that potentially impaired defendant's defense.

Search. State v. Curry | 2022-Ohio-627 | 1st Appellate District | 3/4/22 In a prosecution of a weapons offense for possession of a weapon found in the trunk of defendant's vehicle during a valid traffic stop, grant of motion to suppress was error where officer testified he received training to distinguish the odor of burnt marijuana from raw marijuana and also to detect odor of marijuana in vehicles, and his testimony that he detected raw marijuana odor emanating from the trunk was sufficient to support the search and seizure of the gun found in the trunk under the automobile exception to the requirement of a search warrant, even though no marijuana was found in the trunk.

Return of seized property. State v. Martre | 2022-Ohio-639 | 6th Appellate District | 3/4/22 Following a conviction by plea of attempted domestic violence, the trial court did not err in denying appellant's subsequent request for return of his cell phone that was seized and sent to the county where appellant was convicted for offenses arising from charges based on the video and/or images taken from the cell phone since the phone was lawfully seized, and there was no error in the trial court's determination that the property was subject to disposal as contraband based on obscene materials contained on the cell phone for which appellant was convicted in another jurisdiction, R.C. 2981.03(A)(4).

Plea. State v. Clay | 2022-Ohio-631 | 2nd Appellate District | 3/4/22 In a conviction by plea of first-degree misdemeanor domestic violence, R.C. 2919.25(A), plea was not validly made where the trial court failed to orally or in writing inform defendant of the effect of a no contest plea using the required Crim.R. 11(B)(2) language, constituting a complete failure by the court to comply with Crim.R. 11(E), and appellant is not required to show prejudice; plea is vacated and cause is remanded.

Complaint. State v. Daly | 2022-Ohio-632 | 2nd Appellate District | 3/4/22 In a conviction of violating a protection order that was reversed and remanded for a determination if there was a properly signed and notarized complaint, the trial court erred on remand by not addressing whether the complaint was properly sworn and by granting the state's motion to amend the complaint pursuant to Crim.R. 7(D) since the court should have dismissed the case on the ground that the complaint was not made upon oath before any person authorized by law to administer oaths as required by Crim.R. 3, and the defect was a jurisdictional defect that could not be amended under Crim.R. 7(D); remanded for an order dismissing case.

Evidence. State v. Pitts | 2022-Ohio-643 | 6th Appellate District | 3/4/22 In a conviction of involuntary manslaughter and corrupting another with drugs, any error in admission of improper character evidence under Evid.R. 404(B), based on evidence that appellant had provided drugs to people other than the person who died from a drug overdose, was harmless error where, in addition to appellant's companion's testimony who was with him during the period of time appellant was in communication and met with victim, the evidence established the victim initially reached out to appellant for drugs, there were repeated communications between victim and appellant's Facebook account regarding a drug transaction, and appellant's vehicle was at victim's residence approximately an hour before victim overdosed.

Ineffective assistance. State v. Pardon | 2022-Ohio-663 | 10th Appellate District | 3/8/22 In a conviction of, inter alia, aggravated murder, claim of ineffective assistance is without merit since defense counsel had legitimate strategic reasons for not objecting to, and even agreeing to, the admission of portions of a police video interview of a person who was deceased at the time of the trial, notwithstanding claims of hearsay and confrontation clause violations and, moreover, the trial court's admission of interview did not constitute plain error since video did not add more to what had already been established by the geolocation data and other evidence of appellant's actions after victim's murder.

Mandamus. State ex rel. Joy v. Ohio Adult Parole Auth. | 2022-Ohio-664 | 10th Appellate District | 3/8/22 In inmate's pro se mandamus action to order respondent to recalculate his sentence, relator's objection to magistrate's recommendation of dismissal of petition for relator's failure to comply with R.C. 2969.25(A) is sustained since relator sufficiently described the "nature of the civil action" by his description of the action as a "Petition for Writ of Habeas Corpus" to identify and describe that action under R.C. 2969.25(A)(1) and Sands; case is returned to magistrate for further determination.

Right to counsel. State v. White | 2022-Ohio-665 | 10th Appellate District | 3/8/22 After a conviction by plea of first-degree misdemeanor theft, R.C. 2913.02(A)(1), and subsequent violation of community control, the trial court erred by imposing the suspended sentence since appellant was unrepresented by counsel at the revocation hearing, was never advised of his right to counsel and was not asked whether he wished to waive that right, nor does the record contain any indication that appellant validly waived his right to counsel prior to the revocation of probation and imposition of the balance of his suspended sentence, Crim.R. 32.3 and 44; remanded for a new probation revocation hearing.

Sentencing. State v. Fowler | 2022-Ohio-704 | 8th Appellate District | 3/10/22 In a conviction by plea of, inter alia, second-degree felony burglary and imposition of a minimum

prison sentence of two years and a maximum of three years pursuant to R.C. 2929.144(B)(3) of the Reagan Tokes Law was not error where appellant's challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie that the Law is constitutional.

Sentencing. State v. Polk | 2022-Ohio-706 | 8th Appellate District | 3/10/22 In a conviction by plea of, inter alia, voluntary manslaughter, R.C. 2903.03(A), and discharge of a firearm on or near prohibited premises, R.C. 2923.162(A)(3), although trial court erred in its calculation of the maximum sentence under R.C. 2929.144(B)(2) of the Reagan Tokes Law and cause is remanded to impose the proper maximum-term sentence; also discussed, the Reagan Tokes Law is constitutional, Delvallie.

Sentencing. State v. Davidson | 2022-Ohio-694 | 8th Appellate District | 3/10/22 In a conviction by plea of felony robbery, felonious assault and felony weapons disability, challenge to the constitutionality of the imposition of an indefinite sentence pursuant to the Reagan Tokes Law, R.C. 2929.144, of an aggregate minimum sentence of five years with a potential maximum term of six years, is without merit because, pursuant to this circuit's en banc decision in Delvallie, the Reagan Tokes Law is constitutional.

Sentencing. State v. Green | 2022-Ohio-682 | 8th Appellate District | 3/10/22 In a conviction by plea of, inter alia, aggravated burglary and aggravated robbery, imposition of concurrent and consecutive prison sentences totaling 19 to 24 years pursuant to the Reagan Tokes Law, R.C. 2967.271, the challenge to the constitutionality of the Law is without merit since, pursuant to this circuit's en banc decision in Delvallie, the Reagan Tokes Law is constitutional.

Sentencing. State v. Buckhanon | 2022-Ohio-683 | 8th Appellate District | 3/10/22 In a conviction by plea of, inter alia, two counts of rape of a minor, imposition of concurrent sentences of a minimum of 11 years in prison and a maximum of 16.5 years in prison was not error where the trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and challenge to the constitutionality of the indefinite sentence imposed pursuant to the Reagan Tokes Law, R.C. 2967.271, is without merit since, pursuant to this circuit's en banc decision in Delvallie, the Reagan Tokes Law is constitutional.

Sentencing. State v. Hicks | 2022-Ohio-685 | 8th Appellate District | 3/10/22 In a conviction by plea of two counts of felonious assault and a weapons offense and imposition of an indefinite prison sentence under the Reagan Tokes Law, the court of appeals declines to address the challenge to the constitutionality of the Reagan Tokes Law since appellant failed to raise a constitutional challenge to the Law in the trial court, and he also did not argue plain error on appeal.

Jury instruction. State v. Rodenberg | 2022-Ohio-713 | 5th Appellate District | 3/10/22 In a conviction of gross sexual imposition, R.C. 2907.05(A)(1), the trial court did not err by denying appellant's request of a Dye jury instruction concerning using some force beyond that force inherent in the sexual contact itself since it was inapplicable under the facts because appellant never advanced any similar theory at trial and denied any contact took place outside the hotel bedroom, but the victim testified otherwise.

Sentencing. State v. Claggett | 2022-Ohio-701 | 8th Appellate District | 3/10/22 In a conviction by plea of felony burglary and imposition of an indefinite prison sentence of a minimum of two years and a maximum of three years pursuant to the Reagan Tokes Law, R.C. 2901.011, challenge to the constitutionality of the Reagan Tokes Law is without merit because, pursuant to circuit's en banc decision in Delvallie, the Law is constitutional.

Sentencing. State v. Winkler | 2022-Ohio-702 | 8th Appellate District | 3/10/22 In a conviction by plea of aggravated burglary, R.C. 2911.11(A)(1), and felonious assault, R.C. 2903.11(A)(1), and merger for sentencing of the two convictions as allied offenses, imposition of a minimum prison term of three years and a maximum prison term of four and one-half years on the aggravated burglary offense was not error since challenge to the constitutionality of the Reagan Tokes Law is without merit because, pursuant to this circuit's en banc decision in Delvallie, the Law is constitutional.

Sentencing. State v. Jenkins | 2022-Ohio-705 | 8th Appellate District | 3/10/22 In a conviction by plea of, inter alia, second-degree felony drug possession, R.C. 2925.11(A), and imposition of an indefinite term of two to three years in prison pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie that the Law is constitutional.

Sentencing. State v. Dix | 2022-Ohio-681 | 8th Appellate District | 3/10/22 In a conviction by plea of, inter alia, aggravated robbery, imposition of prison sentence of an indefinite term of six to nine years was not error where sentence was in the statutory range for the offense, the trial court stated that it considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and the record supports the sentence; also, challenge to the constitutionality of the Reagan Tokes Law, R.C. 2967.271, is without merit since, pursuant to this circuit's en banc decision in Delvallie, the Reagan Tokes Law is constitutional.

Sentencing. State v. Webster | 2022-Ohio-688 | 8th Appellate District | 3/10/22 In a conviction by plea of felonious assault, R.C. 2903.11(A)(2), imposition of an indefinite prison term with six years as the minimum term and nine years as the maximum pursuant to the Reagan Tokes Law was not error since challenge to the Reagan Tokes Law as unconstitutional is without merit because, pursuant to this circuit's en banc decision in Delvallie, the Reagan Tokes Law is constitutional.

Sentencing. State v. Hines | 2022-Ohio-684 | 8th Appellate District | 3/10/22 In a conviction by plea of attempted aggravated robbery, R.C. 2923.02, with a firearm specification and imposition of two-to-three years in prison for the attempted aggravated robbery under the Reagan Tokes Law and one year in prison for the firearm specification to run consecutively, challenge to the constitutionality of the indefinite sentence is without merit because, pursuant to this circuit's en banc decision in Delvallie, the Reagan Tokes Law is constitutional.

Criminal (Cont.)

Sentencing. State v. Hardy | 2022-Ohio-686 | 8th Appellate District | 3/10/22 In a conviction of, inter alia, drug trafficking and aggravated vehicular homicide, imposition of an indefinite prison term pursuant to the Reagan Tokes Law, R.C. 2929.144, was not error since challenge to the Law as unconstitutional is without merit because, pursuant to this circuit's en banc decision in Delvallie, the Reagan Tokes Law is constitutional.

Sentencing. State v. Garcia | 2022-Ohio-707 | 8th Appellate District | 3/10/22 In a conviction by plea of first-degree felony voluntary manslaughter, R.C. 2903.03(A), with firearm specifications, imposition of consecutive prison sentences totaling 14 years minimum and 19.5 years maximum pursuant to the Reagan Tokes Law was not error where the trial court stated that it considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12; also, appellant waived claim that the Reagan Tokes Law is unconstitutional by failing to raise issue in the trial court and failing to argue plain error on appeal.

Plea. State v. Perdue | 2022-Ohio-722 | 2nd Appellate District | 3/11/22 In a conviction by plea of, inter alia, aggravated arson, plea was validly made since the trial court did not err in accepting appellant's guilty plea without advising him during the plea hearing of the requirement to register as an arson offender because the arson registration requirements are a remedial, collateral consequence, and a trial court's failure at the plea hearing to advise a defendant of the arson registration requirements does not violate Crim.R. 11(C)(a) or affect the knowing, intelligent and voluntary nature of a plea.

Sentencing. Sproat v. State | 2022-Ohio-746 | 3rd Appellate District | 3/14/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Speeding. N. Kingsville v. Sullivan | 2022-Ohio-754 | 11th Appellate District | 3/14/22 Bench conviction of speeding in violation of municipal ordinance met the sufficiency and weight of evidence standards where traffic citation issued by officer set forth the nature of the charge and the ordinance at issue and, even if the officer's initial omissions were legally problematic, he amended the citation to include all information on the ticket form, and the officer testified that the speed radar gun was calibrated and working correctly and that appellant's speed of 54 m.p.h. in a residential 35 m.p.h. zone was unreasonable under the circumstances.

Search. State v. Harrison | 2022-Ohio-741 | 3rd Appellate District | 3/14/22 In a prosecution of drug offenses, grant of motion to suppress was error since there was reasonable cause for probation officer to believe appellant violated his "Conditions of Supervision" while under post-release control and to order the detention and arrest by the officer who detained appellant and contacted the probation officer who arrived shortly after being contacted and, after interacting with appellant, had reasonable grounds to search the vehicle that appellant had been seen driving, R.C. 2967.131(C).

Discovery. State v. Noling | 2022-Ohio-759 | 11th Appellate District | 3/14/22 Following a conviction of, inter alia, aggravated capital murder that was affirmed, and denials of numerous post-trial motions and petitions, and the Ohio Supreme Court remand for further proceedings concerning appellant's request for DNA profile(s), the trial court's subsequent denial of motion to grant appellant access to state's files that may have disclosed other individuals as suspects was error, and denial of appellant's prior motions and petitions does not warrant the application of res judicata to this appeal.

Aggravated burglary. State v. Miller | 2022-Ohio-771 | 10th Appellate District | 3/15/22 Conviction of, inter alia, aggravated burglary, R.C. 2911.12(A)(2), was supported by sufficient evidence and not against the weight of evidence that a person was likely to be present when the burglaries occurred where work schedules of some of the occupants was irregular, work shift hours and days at work varied, the amount of time that it would have taken appellant to steal numerous items would have been significant and a "consideration of all the circumstances would seem to justify a logical expectation that a person could be present," Green.

Sealing. State v. N.C. | 2022-Ohio-781 | 9th Appellate District | 3/16/22 In an application to seal records of 2010 conviction of ten counts of child pornography that was reversed by the Ohio Supreme Court, holding that the search warrant was invalid and the evidence obtained in executing the warrant suppressed, but no new charges were filed, the trial court erred by failing to weigh the interests of the person in having the official records sealed against the legitimate needs, if any, of the state to maintain those records, R.C. 2953.52(B)(2)(d), including the fact that all the charges were dismissed where the trial court made no mention of any legitimate governmental interests offered by the state.

Reopening. State v. Wagner | 2022-Ohio-801 | 8th Appellate District | 3/16/22 Application to re-open appeal, App.R. 26(B)(1), is granted where appellant established "a colorable claim" of ineffective assistance of appellate counsel by not raising on appeal trial counsel's failure to include a competency evaluation and a pre-sentence investigation report as part of the trial court record on appeal; appeal re-opened for further review and appellate counsel was appointed.

Mandamus. State ex rel. Burkons v. Beachwood | 2022-Ohio-748 | Supreme Court of Ohio | 3/16/22 In an appeal of dismissal of complaint for a writ of mandamus to compel appellee-city to terminate special prosecutor, judgment is affirmed on the grounds that the complaint is moot since the prosecution against relator was halted by the grant of a writ of prohibition based on improper venue and no new criminal prosecution against relator has been instituted.

Sentencing. State v. Maddox | 2022-Ohio-764 | Supreme Court of Ohio | 3/16/22 In a certified-conflict case, the Ohio Supreme Court holds that a defendant's challenge to the constitutionality of sentencing provisions in R.C. 2967.271, a part of the Reagan Tokes Law that authorizes the Department of Rehabilitation and Correction to administratively extend a prison term beyond the imposed minimum term or presumptive earned early-release date, but not beyond the imposed maximum term, is ripe for review in a direct appeal of the conviction and prison sentence.

Forfeiture. State v. Gales | 2022-Ohio-776 | 9th Appellate District | 3/16/22 In a conviction of, inter alia, trafficking in drugs, although the trial court did not err in denying motion to suppress since appellant did not raise issues at the suppression hearing that he raises on appeal and thus forfeited those issues on appeal, the state concedes it did not present evidence to support the forfeiture specification by failing to link cash found in the house to any illegal activity, and fact that appellant had over $4,000 at his residence was not enough to establish that the money was derived directly or indirectly from an offense, R.C. 2981.01(B)(11)(a).

Evidence. State v. Brewer | 2022-Ohio-846 | 5th Appellate District | 3/16/22 In a conviction of felonious assault, R.C. 2903.11, the trial court did not err in admission of cellphone video of appellant's fight with victim since it was properly authenticated by a witness pursuant to Evid.R. 901(A) and by appellant's admission at trial that it was a video of a portion of the fight.

Sentencing. State v. Aldridge | 2022-Ohio-828 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Bowers | 2022-Ohio-895 | 7th Appellate District | 3/17/22 In a conviction by plea of rape of a minor under 13 years-old, R.C. 2907.02(A)(2) and (B), and imposition of indefinite prison sentence of 10 years to 15 years and designating appellant a Tier III sex offender, plea was validly made where the trial court strictly complied with the constitutional notice provisions as well as substantially complied with the non-constitutional notice provisions in Crim.R. 11, including the calculation of the sentence pursuant to the Reagan Tokes Law.

Sentencing. State v. Whetstone | 2022-Ohio-800 | 8th Appellate District | 3/17/22 In an appeal by the state of the sentence imposed in a conviction by plea of, inter alia, first and second-degree felony robbery and a gun specification, the trial court erred in failing to impose an indefinite sentence pursuant to the Reagan Tokes Law on the basis that the Law is unconstitutional since this circuit's court of appeals has held the sentencing provisions in the Law constitutional, Delvallie; reversed and remanded for re-sentencing.

Sentencing. State v. Whittenburg | 2022-Ohio-803 | 8th Appellate District | 3/17/22 In an appeal by state of the sentence imposed in conviction by plea of a second-degree felony offense, the trial court erred in failing to impose an indefinite sentence pursuant to the Reagan Tokes Law on the basis that the Law is unconstitutional since this circuit's court of appeals has held the sentencing provisions in the Law constitutional, Delvallie; reversed and remanded for re-sentencing.

Hearsay. State v. Bell | 2022-Ohio-823 | 8th Appellate District | 3/17/22 In a bench conviction of felonious assault, R.C. 2903.11(A)(2), the trial court did not err in admitting hearsay of statements made to officer by victim and his friend, the estranged wife of appellant who viewed the incident, that led to the charge against appellant, and officer's testimony concerning a call made by appellant to police about a rock being thrown at his vehicle was offered to explain an officer's conduct while investigating a crime, not inadmissible hearsay, Evid.R. 803(1) and (2).

Sentencing. State v. Young | 2022-Ohio-799 | 8th Appellate District | 3/17/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Corrigan | 2022-Ohio-816 | 8th Appellate District | 3/17/22 In an appeal by the state challenging the trial court's imposition of a definite sentence for a qualifying felony under the Reagan Tokes Law, judgment is reversed and case is remanded for re-sentencing since the Reagan Tokes Law was held constitutional in this circuit's en banc decision in Delvallie.

Sentencing. State v. Tolliver | 2022-Ohio-826 | 8th Appellate District | 3/17/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Habeas corpus/Declaratory judgment/Mandamus. State ex rel. Guthrie v. Fender | 2022-Ohio-767 | Supreme Court of Ohio | 3/17/22 In inmate's pro se action seeking a declaratory judgment and writs of habeas corpus and mandamus for alleged violations in the revocation of his parole, the court of appeals' dismissal of declaratory judgment claim was proper since courts of appeals lack original jurisdiction of declaratory judgment claims, dismissal of habeas corpus action was proper since that action is not the proper remedy for appellant's claims of due process violations in his parole revocation and, although a mandamus action is the appropriate remedy for such a violation, it was properly transferred to the appellate district that had jurisdiction over that claim.

Sentencing. State v. Hardin-Rogers | 2022-Ohio-802 | 8th Appellate District | 3/17/22 In an appeal by the state of sentence imposed in conviction by plea of, inter alia, first- and second-degree felony offenses, the trial court erred in failing to impose an indefinite sentence pursuant to the Reagan Tokes Law on the basis that the Law is unconstitutional since this circuit's court of appeals has held the sentencing provisions in the Law constitutional, Delvallie; reversed and remanded for re-sentencing.

Indictment. State v. Walker | 2022-Ohio-820 | 8th Appellate District | 3/17/22 In a conviction by plea of falsification, claim that the trial court erred by convicting appellant of falsification, a fifth-degree felony because the state did not specify in indictment or prove the value of the services is without merit since appellant waived any argument of a deficiency in the indictment by failing to object to the indictment and by pleading guilty to the offense, Crim.R. 11(B)(1) and 12(C)(2).

Sentencing. State v. Coleman | 2022-Ohio-809 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Wurtz | 2022-Ohio-810 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Taylor | 2022-Ohio-811 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Ineffective assistance. State v. Debose | 2022-Ohio-837 | 8th Appellate District | 3/17/22 In a conviction by plea of drug trafficking, defense counsel did not provide ineffective assistance: by not challenging the constitutionality of the Reagan Tokes Law since this court of appeals has held that the Law is constitutional; by not filing an affidavit of indigency and requesting waiver of the mandatory fine since the trial court could have reasonably determined, based on the record, that appellant would not be unable to pay a $10,000 fine; and by not making an effective mitigation argument at sentencing since a "no excuses" approach is an appropriate tactical decision in light of appellant's lengthy criminal record.

Sentencing. State v. McCarver | 2022-Ohio-813 | 8th Appellate District | 3/17/22 In an appeal by the state challenging the trial court's imposition of a definite sentence for a qualifying felony under the Reagan Tokes Law, judgment is reversed and case is remanded for re-sentencing since the Law was held constitutional in this circuit's en banc decision in Delvallie; remanded for re-sentencing.

Sentencing. State v. Reed | 2022-Ohio-818 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Sitgraves | 2022-Ohio-819 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Gilmer | 2022-Ohio-821 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Search. State v. Kent | 2022-Ohio-834 | 8th Appellate District | 3/17/22 In a conviction of, inter alia, three counts of drug trafficking, denial of motion to suppress was not error where officer testified that while performing a pat-down during a traffic stop, he felt something that had the consistency of contraband in appellant's groin area and that based on the location of the "golf-ball sized" bulge and his training and experience in the vice unit, officer testified that it was immediately apparent to him that the bulge had the consistency of illegal narcotics.

Restitution. State v. Jackson | 2022-Ohio-807 | 8th Appellate District | 3/17/22 In convictions by plea in six felony cases, the trial court did not commit plain error in the restitution order where there was a pre-sentence investigation report prepared and reviewed by the trial court and appellant's counsel who did not question or challenge the amounts of restitution; also discussed, indefinite sentence imposed pursuant to the Reagan Tokes Law is constitutional, Delvallie.

Sentencing. State v. Gillespie | 2022-Ohio-805 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Houchens | 2022-Ohio-806 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Sender | 2022-Ohio-808 | 8th Appellate District | 3/17/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Cambria | 2022-Ohio-830 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Cambria | 2022-Ohio-831 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Drewery | 2022-Ohio-838 | 8th Appellate District | 3/17/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. McCalpine | 2022-Ohio-842 | 8th Appellate District | 3/17/22 In an appeal by the state challenging the trial court's imposition of a definite sentence for a qualifying felony under the Reagan Tokes Law,

judgment is reversed and case is remanded for re-sentencing since the Law has been held constitutional in this circuit's en banc decision in Delvallie; remanded for re-sentencing.

Jury. State v. McGee | 2022-Ohio-864 | 6th Appellate District | 3/18/22 In a conviction of rape of a person less that 13 years-old, R.C. 2907.02(A)(1)(b) and (B), claim that appellant's due process rights were violated because two jurors indicated that they had difficulty in hearing the complaining witness was without merit where the trial judge questioned the jurors and they did not state that they could not hear the testimony of the witness, but only that it was difficult, and the trial court provided them the transcript, and the jurors had the opportunity to view the witness as she was testifying, and to examine any cues bearing on her credibility.

Sentencing. State v. Searls | 2022-Ohio-858 | 2nd Appellate District | 3/18/22 In a conviction by plea of two counts of gross sexual imposition, 60 counts of pandering obscenity involving a minor and one count of attempted tampering with evidence, although the trial court properly calculated the aggregate maximum prison sentence of 22 years pursuant to R.C. 2929.144(C) of the Reagan Tokes Act for the three pandering obscenity counts subject to the Act that were run consecutively, the court erred in imposing a minimum of 18 years for those offenses under the Act since it should have been eight years.

Search. State v. Keister | 2022-Ohio-856 | 2nd Appellate District | 3/18/22 In a conviction of, inter alia, aggravated possession of drugs, denial of motion to suppress was not error since officers investigating defendant's single car accident did not unreasonably prolong appellant's detention to search for a box containing a gun and other contraband where off-duty officer saw appellant's single car accident and observed appellant place what appeared to be a firearm wrapped in a sweatshirt in a box and then take it toward a fence line near the highway, providing responding officers a reasonable and articulable suspicion of criminal activity to detain appellant and his detention prior to his arrest was not unreasonably prolonged.

Return of property. In re Gipson | 2022-Ohio-853 | 1st Appellate District | 3/18/22 In a conviction of direct criminal contempt arising out of appellant's unauthorized recording of court proceedings, Loc.R. 33(D)(6), the trial court erred by denying appellant's motion for return of his property since indefinitely retaining appellant's cell phone and iPad is not reasonably commensurate gravity of the offense that he was convicted of, Hammock; argument challenging conviction of direct criminal contempt is not relevant since appellant did not file an appeal of his conviction.

Right to counsel. State v. Torres | 2022-Ohio-889 | 11th Appellate District | 3/21/22 In a conviction by plea of failure to comply with order or signal of police officer and receiving stolen property, subsequent revocation of community control and imposition of sentence was plain error since the trial court violated appellant's right to counsel where appellant was not given the opportunity to consult with his defense counsel prior to revocation/sentencing since defense counsel was unaware of the facts underlying appellant's incarceration in another state, and those facts were not fully developed at the hearing, nor reflected in the record, Crim.R. 32.3; remanded for new hearing.

Grand theft of motor vehicle. State v. Robertson | 2022-Ohio-905 | 5th Appellate District | 3/21/22 Conviction of grand theft of a motor vehicle, R.C. 2913.02, was not supported by sufficient evidence where the state failed to provide sufficient evidence that appellant's use of the vehicle was without the consent of owners of the vehicle where the owners did not testify, and the fact that a business surveillance video showed appellant driving vehicle was insufficient evidence to demonstrate that appellant was driving the vehicle without consent.

Plea. State v. Tancak | 2022-Ohio-880 | 9th Appellate District | 3/21/22 In a conviction by plea of, inter alia, vehicular homicide and OVI, the trial court erred during plea hearing by failing to advise appellant during the plea hearing of the statutory requirement that any sentence imposed for failure to comply with an order or signal of a police officer would be served consecutively with any other sentence imposed pursuant to R.C. 2921.331(D), Crim.R. 11(C)(2)(a); the trial court's judgment as to that count is vacated and remanded for further proceedings.

Speedy trial. State v. Savors | 2022-Ohio-894 | 7th Appellate District | 3/21/22 In a conviction by plea of failure to verify address and failure to provide notice of change of address, denial of motion for discharge for statutory speedy trial violation is without merit in light of the COVID statutory tolling provision, and no discharge for constitutional speedy trial violation was warranted where the delay between appellant's arrest and his scheduled trial of four months and 14 days was insufficient to demonstrate the presumptive prejudice to trigger the remainder of the Barker factors.

New trial/Post-conviction relief. State v. Bethel | 2022-Ohio-783 | Supreme Court of Ohio | 3/22/22 Following appellant's 2003 conviction of two counts of capital aggravated murder that was affirmed, denial of 2018 motion for leave to file a Crim.R. 33 motion for new trial and dismissal of successive petition for post-conviction relief was not error since allegedly exculpatory document did not create a reasonable probability of a different result at trial, R.C. 2953.23(A)(1)(b), and appellant's failure to meet his burden under R.C. 2953.23(A)(1)(b) requires denial of his motion for leave to file a motion for a new trial; also discussed, Brady claim.

Sentencing. State v. Holsey | 2022-Ohio-941 | 8th Appellate District | 3/24/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Daniel | 2022-Ohio-934 | 8th Appellate District | 3/24/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Mitchell | 2022-Ohio-935 | 8th Appellate District | 3/24/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of

the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Plea withdrawal. State v. Woljevach | 2022-Ohio-932 | 8th Appellate District | 3/24/22 In an appeal by the state of grant of 2021 motion to withdraw 2005 plea of, inter alia, drug trafficking and child endangering with appellee proposing he would now plead guilty to one felony and two misdemeanor charges, claiming he pled under the misapprehension that he would be able to seal the convictions, the trial court erred in granting the motion where appellee failed to show extraordinary circumstances justified the withdrawal of his guilty plea 15 years after sentence since the fact that felony convictions make employment more challenging is not an extraordinary reason for granting the motion.

Sentencing. State v. McGlothin | 2022-Ohio-940 | 8th Appellate District | 3/24/22 In a conviction by plea of felonious assault, R.C. 2903.11(A)(2), and having weapons while under disability, R.C. 2923.13(A)(2), imposition of sentence of one year on a firearm specification, to be served prior to and consecutive to six to nine years on the felonious assault offense, and a concurrent sentence of 36 months on the weapons offense was not error since the trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and challenge to the constitutionality of the indefinite sentence imposed pursuant to the Reagan Tokes Law is without merit, Delvallie.

Sentencing. State v. Perry | 2022-Ohio-944 | 8th Appellate District | 3/24/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Primm | 2022-Ohio-945 | 8th Appellate District | 3/24/22 In a conviction of drug and weapons offenses, the state appeals sentence that was not imposed in accordance with the Reagan Tokes Law following the trial court's finding the Law unconstitutional, the court of appeals reverses in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; sentence is vacated and case is remanded for the imposition of a sentence pursuant to the Reagan Tokes Law.

Sentencing. State v. Dudas | 2022-Ohio-931 | 8th Appellate District | 3/24/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Prosecutorial misconduct. State v. Maddox | 2022-Ohio-956 | 5th Appellate District | 3/24/22 In a conviction of rape of a person less than 13 years-old, R.C. 2907.02(A)(1)(b), any prosecutorial misconduct by improper vouching for the victim's credibility during closing arguments and improper statements during closing arguments about victim collapsing outside the courtroom after she testified was harmless error, and testimony regarding appellant's drug use and evidence of prior specific instances of appellant's sexual activity and drug use were not the result of prosecutor's conduct and did not affect the fairness of the trial.

Witnesses. State v. Armstrong | 2022-Ohio-1119 | 7th Appellate District | 3/24/22 In a conviction of felonious assault and a weapon offense, the trial court did not err by granting state's request that court call a witness as the court's witness pursuant to Evid.R. 614(A) where, although witness was not romantically involved with defendant at the time victim was shot, she had been romantically involved with him prior to the shooting and reconciled with him after the shooting, and her most recent statement to police claimed she could not recall the shooting that was contrary to her prior statements to police that incriminated appellant.

Jury instruction. State v. Nastal | 2022-Ohio-970 | 6th Appellate District | 3/25/22 In a conviction of three counts of first-degree misdemeanor vehicular homicide, R.C. 2903.06(A)(2)(a) and (C), and two counts of fourth-degree felony vehicular assault, R.C. 2903.08(A)(2)(b) and (C)(2), the trial court did not err by not giving a jury instruction on negligent assault as a lesser-included offense of vehicular assault since there was no evidence demonstrating that appellant possessed or used his truck as a weapon rather than as a vehicle.

Assault. State v. Bullock | 2022-Ohio-925 | 1st Appellate District | 3/25/22 Conviction of two counts of assault, R.C. 2903.13(A), arising out of prisoner's separate physical confrontations with different corrections officers was not against the weight of evidence where trier of fact did not lose its way in making its credibility determinations based on the video and testimony of the state's witnesses.

Competency. State v. Mills | 2022-Ohio-969 | 6th Appellate District | 3/25/22 In a conviction of, inter alia, felonious assault, the trial court did not err by not holding a competency hearing before trial since appellant failed to cooperate in a competency evaluation he requested, R.C. 2945.371(C)(1), and his interactions with the trial court did not indicate incompetency by claiming his speedy trial right and fair trial rights in a Batson challenge were being infringed since his behavior, while aggressive, hostile and disruptive, was not sufficient indicia of mental incompetency.

Patient neglect. State v. Goins | 2022-Ohio-985 | 3rd Appellate District | 3/28/22 Nursing home employee's conviction of patient neglect, R.C. 2903.34(A)(3), in a resident's death met the sufficiency and weight of evidence standards since appellant's reckless conduct in failing to review resident's after-care instructions and inform other nursing home care takers was a "substantial" or "contributing" factor in producing serious physical harm and that the resident's serious physical harm could be reasonably anticipated by an ordinarily prudent person as likely to result under these or similar circumstances.

Evidence. State v. Tarbet | 2022-Ohio-1005 | 11th Appellate District | 3/28/22 In a conviction of two counts of third-degree felony tampering with evidence and two counts of first-degree misdemeanor petty theft for accepting payment for services that appellant did not provide, admission of other similar acts that were not charged but then dropped that occurred on a day for which appellant was charged was not error since the acts showed her

modus operandi and the start of the investigation, and therefore met the exception provided by Evid.R. 404(B).

Nonsupport of dependents. State v. Swazey | 2022-Ohio-993 | 9th Appellate District | 3/28/22 In a conviction by plea of three counts of non-support of dependents, R.C. 2919.21(B), the trial court erred in denying appellant's motion to dismiss since to establish the general issue at trial, the state would be required to demonstrate the existence of a support order and that appellant failed to pay his court-ordered support, and determining when appellant's support order terminated would be an issue for appropriate determination in a motion to dismiss.

Search. State v. Rowley | 2022-Ohio-997 | 12th Appellate District | 3/28/22 In an appeal by the state of grant of motion to suppress in a drug prosecution, the trial court erred in granting motion since officer's entry into defendant's residence was justified by probable cause and exigent circumstances where officers were dispatched to a possible domestic violence situation, there was extensive damage to the drywall of the apartment, the door was severely damaged and officer noticed blood on the floor near the door, and in entering saw that defendant had a bloody nose and blood on his face, the apartment was in disarray and, in looking for a possible victim, officer saw drug paraphernalia in plain view.

Competency. State v. Collins | 2022-Ohio-1018 | 1st Appellate District | 3/30/22 In a prosecution of theft from a person in a protected class and unauthorized use of property, the trial court's judgment finding appellant incompetent to stand trial under R.C. 2945.37 and ordering her to undergo treatment was error because the court clinic report on competency was not properly admitted into evidence where the parties did not stipulate to it and there was no testimony concerning it, and thus there was not sufficient evidence to overcome the presumption of competency.

Plea. State v. Harris | 2022-Ohio-1021 | 1st Appellate District | 3/30/22 In a conviction by plea of domestic violence, plea was not validly made since the trial court at the plea hearing failed to strictly comply with Crim.R. 11 by not advising appellant of his constitutional right to confrontation, Crim.R. 11(C)(2)(c), and the signed plea agreement that included the right does not satisfy the strict-compliance standard when a right is omitted from an oral colloquy.

Sentencing. State v. Bradley | 2022-Ohio-1075 | 8th Appellate District | 3/31/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Hunter | 2022-Ohio-1072 | 8th Appellate District | 3/31/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Search. State v. Neyhard | 2022-Ohio-1098 | 11th Appellate District | 3/31/22 In a plea of improperly handling firearms in a motor vehicle, R.C. 2923.16(B)(1), denial of motion to suppress was error where, although officer had reasonable cause to make a traffic stop, the stop was unreasonably prolonged while waiting for backup before performing a canine free-air sniff since there was no suspicion of drug activity by appellant other than driving in a high-crime drug area, and officer's body-cam video and testimony do not affirmatively demonstrate that officer was awaiting any information from dispatch necessary to finishing the tasks reasonably related to the purpose of the stop.

Evidence. State v. Burnette | 2022-Ohio-1103 | 9th Appellate District | 3/31/22 In a conviction of domestic violence, unlawful restraint and disorderly conduct, testimony of responding officer to victim's 9-1-1-call that appellant was the primary physical aggressor in the incident that occurred between him and the victim was not inadmissible under Evid.R. 403(A) since the issue of who was the primary aggressor is relevant to claim of self-defense, and officer never offered an opinion on the ultimate issue of whether appellant was guilty of domestic violence or unlawful restraint.

Bond forfeiture. State v. Jackson | 2022-Ohio-1306 | 7th Appellate District | 3/31/22 Following a conviction of defendant and his failure to appear at sentencing, the trial court erred by ordering forfeiture of bond by appellant-bond company since the court never provided appellant with a hearing where it could show cause before the court entered the judgment of forfeiture in violation of R.C. 2937.36(C), nor did the court set out any findings or basis for its decision despite appellant's application of the bond remission factors as applied to the facts of this case in its motion, Smith; remanded for a hearing.

Sentencing. State v. Sanders | 2022-Ohio-1066 | 8th Appellate District | 3/31/22 In a conviction by plea of, inter alia, aggravated murder, R.C. 2903.01(A), challenge to the imposition of indefinite sentence to qualifying offenses pursuant to the Reagan Tokes Law was not error since in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Mitchell | 2022-Ohio-1063 | 8th Appellate District | 3/31/22 In a conviction by plea of, inter alia, a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Indictment/Forfeiture. State v. Tolbert | 2022-Ohio-1159 | 4th Appellate District | 3/31/22 In a conviction by plea of drug possession, R.C. 2925.11(A) and (C)(11)(c), the trial court did not commit plain error by permitting amendment of indictment where appellant acquiesced to amendment nor did defense counsel provide ineffective assistance where appellant pled guilty to the amended count after being fully apprised of his rights and no reasonable probability that, but for counsel's alleged errors, appellant would have declined to plead guilty; also, since appellant agreed to a forfeiture of $1,329 in the plea agreement and during the plea colloquy, he voluntarily relinquished that property.

Criminal (Cont.)

Sentencing. State v. Ransom | 2022-Ohio-1060 | 8th Appellate District | 3/31/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Jury trial. State v. Bentley | 2022-Ohio-1099 | 11th Appellate District | 3/31/22 Bench conviction of assault, R.C. 2903.13(A), was error since appellant made a Crim.R. 23(A) demand for a jury trial, entitling him to a trial by jury, R.C. 2945.17, and the record does not demonstrate he waived that right in writing as required by R.C. 2945.05; remanded for new trial.

Contempt. State v. Morrow | 2022-Ohio-1089 | 5th Appellate District | 3/31/22 Conviction of direct criminal contempt, R.C. 2705.01, met the sufficiency and weight of evidence standards where appellant misrepresented to the prosecutor that he would change his plea in an action against him of a weapon offense, but at the hearing stated that he never intended to change his plea and instead challenged the state's case against him, supporting a finding of disrespect for the administration of justice by impeding or disturbing the court in the performance of its functions.

Plea withdrawal. State v. Stone | 2022-Ohio-1117 | 2nd Appellate District | 4/1/22 Following a 2004 conviction by plea of murder that was not appealed, denial of, inter alia, 2021 pro se successive motion to withdraw plea was not error since appellant did not directly appeal his conviction, and in none of his previous plea withdrawal motions did he argue that incorrect information about post-release control prevented him from making a valid guilty plea since he could have challenged his guilty plea on direct appeal or asserted the grounds for relief in a previous plea withdrawal motion, and thus res judicata bars further challenge.

Competency. State v. Purdy | 2022-Ohio-1131 | 3rd Appellate District | 4/4/22 In a conviction by plea of 14 counts of fourth-degree felony pandering obscenity involving a minor, R.C. 2907.321(A)(5), the trial court did not err by not sua sponte ordering a competency hearing prior to accepting plea since claim that traumatic brain injury affected appellant's competency is not supported by any evidence in the record that appellant behaved irrationally in the courtroom or that there is a prior medical opinion of his competency to stand trial, and the trial court discussed appellant's injury with him and concluded the injury did not impact appellant's competency.

Evidence. State v. Hall | 2022-Ohio-1147 | 12th Appellate District | 4/4/22 In a conviction of, inter alia, four counts of rape of minor step-daughter, admission of other acts evidence, Evid.R. 404(B), by appellant's adopted daughter was not error where appellant placed his intent at issue by claiming his actions were accidental, innocent, or without his knowledge, and testimony was properly admissible as other-acts evidence under Evid.R. 404(B) to show intent and the absence of mistake or accident.

Involuntary manslaughter. State v. Haines | 2022-Ohio-1145 | 12th Appellate District | 4/4/22 Conviction of involuntary manslaughter and drug offenses for the overdose death of person who purchased narcotics from appellant met the sufficiency and weight of evidence standards where, inter alia, text messages between the victim and appellant were credible evidence that appellant knowingly sold and knowingly furnished to appellant two controlled substances that caused serious physical harm to the victim since the possibility of an overdose is a reasonably foreseeable consequence of providing a controlled substance to another.

Failure to comply. State v. Wilson | 2022-Ohio-1146 | 12th Appellate District | 4/4/22 Conviction of failure to comply with an order or signal of a police officer, R.C. 2921.331(B), met the sufficiency and weight of evidence standards where video from officer's camera and officer's testimony supported the state's case that appellant failed to comply by fleeing as officer was in pursuit of her, and jury was free to disbelieve appellant's testimony otherwise in making its credibility determinations.

Plea withdrawal. State v. Leftwich | 2022-Ohio-1153 | 5th Appellate District | 4/5/22 In a conviction by plea of aggravated robbery, R.C. 2911.01(A)(1), with a firearm specification, plea was validly made where defendant's claim that he did not use a real gun in the robbery is insufficient since the gun was never recovered and the victim believed that defendant held a real gun to her head, a guilty plea admits the facts set forth in the indictment, not the facts set forth at the plea hearing, and the trial court complied with the Crim.R. 11(C) requirements at the plea hearing.

Evidence. State v. Allen | 2022-Ohio-1180 | 4th Appellate District | 4/5/22 In a conviction of two counts of gross sexual imposition of a minor less than 13 years-old, the trial court did not commit plain error by admission of photographs of drawings made by victim of male genitalia since the photographs had a tendency to make it more probable that appellant caused victim to have sexual contact with him and that the probative value was not substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, Evid.R. 403(A).

Evidence. State v. Sapharas | 2022-Ohio-1157 | 9th Appellate District | 4/6/22 In an appeal by the state of grant of a motion to suppress in a prosecution of, inter alia, aggravated murder and rape, the trial court erred in denying state's motion to admit other acts evidence since the other acts evidence was probative of either identity or motive and thus offered for a legitimate, non-propensity purpose, Evid.R. 404(B); but whether the other acts evidence will become relevant to prove defendant's identity and/or absence of mistake or accident will depend on the defense he advances at trial, and thus any argument related to the admissibility of his other acts to prove identity and absence of mistake or accident is premature, Evid.R. 403(A); remanded.

Sentencing. State v. Daniel | 2022-Ohio-1165 | 8th Appellate District | 4/7/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; the trial court did err by imposing a no contact order since it also imposed a prison sentence because a prison term and a community-control sanction cannot be imposed for the same offense, Anderson.

Sentencing. State v. Sealey | 2022-Ohio-1166 | 8th Appellate District | 4/7/22 In a conviction by plea of aggravated robbery, the state appeals sentence that was not imposed in accordance with the Reagan Tokes Law following the trial court's finding the Law unconstitutional and sentencing defendant based on prior sentencing structure, the court of appeals reverses in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; sentence is vacated and case is remanded for imposition of a sentence pursuant to the Reagan Tokes Law.

Sentencing. State v. Cloud | 2022-Ohio-1174 | 8th Appellate District | 4/7/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Byrd | 2022-Ohio-1168 | 8th Appellate District | 4/7/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Plea/Sentencing. State v. Vitumukiza | 2022-Ohio-1170 | 8th Appellate District | 4/7/22 In a conviction by plea of, inter alia, rape, R.C. 2907.02(A)(1)(c), plea was validly made where record shows the trial court fully complied with Crim.R. 11, the sentencing provisions of the Reagan Tokes Law are constitutional and, although the trial court made the requisite findings for the imposition of consecutive sentences at sentencing, it failed to include them in its sentencing entry; case is remanded for the trial court to make nunc pro tunc sentencing entry incorporating its findings for consecutive sentences.

Jail-time credit. State v. Crisp | 2022-Ohio-1221 | 4th Appellate District | 4/7/22 Following a 2008 conviction by plea of drug and criminal tools offenses and imposition of an aggregate 15-year prison sentence to run "concurrent" to appellant's federal prison sentence, and crediting him with the 87 days that he was held in a county jail, denial of 2021 motion for an additional 481 days of jail-time credit was not error since appellant was serving an unrelated federal prison sentence at the time he was charged in the underlying case, and he is not entitled to credit for that period, R.C. 2967.191(A).

Fine. State v. Patterson | 2022-Ohio-1167 | 8th Appellate District | 4/7/22 Following a conviction by plea of drug trafficking and related offenses that was affirmed in part, but reversed as to imposition of a mandatory fine, the court of appeals holding that defense counsel provided ineffective assistance for failing to file a motion to avoid the imposition of the mandatory fine based on appellant's indigency and, on remand, fine was waived based on the trial court's finding that appellant was indigent, and appellant was not prejudiced by the trial court's failure to hold re-sentencing in his presence as required by Crim.R. 43(A).

Sentencing. State v. Parker | 2022-Ohio-1164 | 8th Appellate District | 4/7/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; also, challenge to the Reagan Tokes Law as unconstitutionally vague was not raised at trial, and it is waived on appeal.

Witnesses. State v. Litteral | 2022-Ohio-1187 | 2nd Appellate District | 4/8/22 In a conviction of forgery, R.C. 2913.31(A)(1), the trial court did not err when it overruled appellant's motion for a mistrial for inconsistencies in the victim's testimony and her arguable perjury by not initially disclosing who told her that appellant had cashed her check since, after initially refusing to provide the name of the person who told her and stating she did not know the person, with the judge informing her during a recess that she was required to provide the name, she did so after the recess and was questioned by both parties, admitting that she lied to protect her son, appellant's nephew.

Grand theft. State v. Piskac | 2022-Ohio-1209 | 11th Appellate District | 4/11/22 Conviction of grand theft, R.C. 2913.02, was not supported by sufficient evidence of an intent to deprive since nothing in the record suggests that appellant, the son of the wife of the vehicle's owner, tried to conceal the fact that he took the vehicle and when contacted by a family member, he arranged to return the vehicle and did so within a few hours; however, since the evidence was sufficient to support the lesser-included offense of unauthorized use of a motor vehicle, R.C. 2913.03, cause is remanded to enter a judgment of unauthorized use of a motor vehicle and re-sentence appellant accordingly.

Confrontation Clause. State v. Hoskinson | 2022-Ohio-1203 | 3rd Appellate District | 4/11/22 In a conviction of, inter alia, aggravated robbery, Confrontation Clause was not violated by admission of state employee's testimony of a report she prepared that would have been replaced by a report prepared by another state employee that verified the witness' report, but was not admitted into evidence since the state employee who testified became available for trial, and the subsequent report did not retract, abrogate or invalidate the findings in the testifying witness' report, and appellant was able to cross-examine the witness.

Witnesses. State v. Eatmon | 2022-Ohio-1197 | Supreme Court of Ohio | 4/12/22 In an appeal by the state of denial of material-witness warrants for two prospective witnesses in a prosecution of, inter alia, attempted murder, the Ohio Supreme Court affirms, holding that state failed to support by oath or affirmation its request for warrants to detain alleged material witnesses and failed to provide probable cause to believe the witnesses were material and that the warrants were necessary to procure the witnesses' attendance at trial where nothing in the record established the prospective witnesses had actual knowledge of the subpoenas.

Tampering with evidence. State v. Craig | 2022-Ohio-1219 | 10th Appellate District | 4/12/22 Conviction of tampering with evidence, R.C. 2921.12, met the sufficiency and weight of evidence standards, where, although appellant was acquitted of charges of felonious assault and domestic violence during a fight with his roommate, he admitted to discarding the knife he used

to stab his roommate while fleeing from him, and jury could reasonably conclude from this evidence that appellant knew his conduct would trigger an investigation into the stabbing, and the jury could have also concluded appellant's purpose in disposing of the knife was to impair its availability during an investigation by the police.

Right to counsel. State v. Meyer | 2022-Ohio-1226 | 5th Appellate District | 4/13/22 In a conviction of fourth-degree misdemeanor "animals in the public roadway," R.C. 951.02, the trial court erred by permitting appellant to proceed pro se without a valid waiver of his Sixth Amendment right to counsel where appellant made no affirmative waiver of counsel, in light of the lack in the record of any advisement of the range of allowable punishments, including the fact that appellant faced potential jail time if convicted, nor was there any advisement that he might be entitled to court-appointed counsel.

Sentencing. State v. D.S. | 2022-Ohio-1229 | 8th Appellate District | 4/14/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Turner | 2022-Ohio-1240 | 8th Appellate District | 4/14/22 In state's appeal of sentence imposed in conviction by plea of aggravated robbery and weapons disability, the trial court erred by failing to impose an indefinite sentence pursuant to the Reagan Tokes Law and instead imposing a concurrent definite sentence pursuant to the law prior to the enactment of the Reagan Tokes Law in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; remanded for re-sentencing.

Murder. State v. Travis | 2022-Ohio-1233 | 8th Appellate District | 4/14/22 In a bench conviction of, inter alia, murder, claim that the trial court failed to consider lesser included offenses is without merit since the trial court as trier of fact is presumed to have considered appellant's claims of accident and reckless homicide, but the trial court found that the evidence supported the charge of murder rather than the lesser included offenses, and appellant did not act in self-defense since surveillance video of the shooting showed that the victim did nothing to create the situation that gave rise to appellant shooting him.

Sentencing. State v. Thomas | 2022-Ohio-1241 | 8th Appellate District | 4/14/22 In state's appeal of sentence imposed in conviction by plea of second-degree felony drug possession, the trial court erred by failing to impose an indefinite sentence pursuant to the Reagan Tokes Law and instead imposing a definite sentence pursuant to the law prior to the enactment of the Reagan Tokes Law in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; remanded for re-sentencing.

Indictment/Bill of particulars. State v. Isenogle | 2022-Ohio-1257 | 5th Appellate District | 4/14/22 In a conviction of, inter alia, illegal manufacture of drugs, the trial court did not err by permitting the state to amend indictment and bill of particulars from R.C. 2925.04(A)(C)(2) to R.C. 2925.04(A)(C)(3) since the amendment did not change the identity of the crime, Crim.R. 7(D), because the substantive information stated in the indictment and bill of particulars provided appellant with ample warning that he was charged with illegal manufacture of methamphetamine, R.C. 2925.04(A), the evidence on count one concerned only the illegal manufacture of methamphetamine, and the jury instructions and verdict form for count one correctly referenced R.C. 2925.04(A)(C)(3).

Sentencing. State v. Riemer | 2022-Ohio-1230 | 8th Appellate District | 4/14/22 In a conviction by plea of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Prosecutorial misconduct. State v. Walker | 2022-Ohio-1238 | 8th Appellate District | 4/14/22 In a conviction of domestic violence, R.C. 2919.25(D)(4), although prosecutor during closing argument did not improperly vouch for the credibility of the witnesses since the prosecutor's comments were based on their in-court testimony, the prosecutor engaged in misconduct and deprived appellant of a fair trial by urging the jury to convict appellant because of the need to end his characteristic "cycle of abuse" or "cycle of domestic violence" alleged to be evident from his prior convictions.

Plea. State v. Bond | 2022-Ohio-1246 | 8th Appellate District | 4/14/22 In a conviction by plea after juvenile court bindover for, inter alia, involuntary manslaughter, although juvenile court's mandatory transfer to the general division court pursuant to R.C. 2152.10 and 2152.12 was not error since the transfer procedures are constitutional, Aalim, the trial court erred following transfer by failing to inform appellant of her right to trial by jury, Crim.R. 11(C)(2); plea is vacated and case is remanded.

Judicial bias. State v. Avonts | 2022-Ohio-1265 | 6th Appellate District | 4/15/22 In a conviction by plea of OVI, R.C. 4511.19(A)(1)(a), claim of judicial bias in sentencing appellant to the maximum sentence is without merit where the pre-sentence investigation report discovered appellant's prior OVI convictions and the prosecutor indicated it was an oversight rather than a decision or exercise of discretion in charging appellant with the misdemeanor offense.

Appointed counsel fee/Supervision fee. State v. Phillips | 2022-Ohio-1262 | 2nd Appellate District | 4/15/22 In a conviction by plea of felony aggravated possession of drugs, the trial court erred by ordering appellant to pay an appointed-counsel fee as part of the sentencing entry since the entry does not indicate that the appointed-counsel fee represents a civil assessment is not part of appellant's criminal sentence, Taylor; however, the court did not err by ordering appellant to pay a supervision fee since it stated on the record that it considered the pre-sentence investigation report that included appellant's present and future ability to pay the fee.

Jury instructions. State v. Fecko | 2022-Ohio-1277 | 11th Appellate District | 4/18/22 In a conviction of rape, R.C. 2907.02(A)(1)(b) and (B) and 2971.03(B)(1)(a), of a 12 year-old female, the trial court did not err in not instructing the jury on the lesser-included offense of

gross sexual imposition, R.C. 2907.05(A)(4), where victim's testimony was unequivocal that appellant penetrated her "private part," nor was appellant entitled to an instruction on sexual imposition, R.C. 2907.06(A)(1) or (4), since the charged rape offense can be committed without sexual imposition as defined in R.C. 2907.06(A)(1) also being committed.

New trial. State v. Gavin | 2022-Ohio-1287 | 4th Appellate District | 4/19/22 Following a 2013 conviction of drug offenses, denial without a hearing of 2020 motion for leave to file a motion for new trial was error because appellant alleged that a new witness was available who was not previously known, but the trial court erroneously applied a reasonableness time requirement for the filing of the motion that is not included in Crim.R. 33(A)(6); if the trial court determines on remand that the documents submitted provide prima facie evidence that appellant was unavoidably prevented from timely discovering the evidence at issue, he would be entitled to a hearing on his motion for leave.

Sentencing. State v. Bontrager | 2022-Ohio-1367 | 4th Appellate District | 4/19/22 In a conviction by plea of two counts of involuntary manslaughter of a woman and her unborn child and drug offenses involving the victims, the trial court erred in not merging allied offenses of a similar import for sentencing under R.C. 2941.25 of trafficking in drugs, R.C. 2925.03(A)(1), and possession of drugs, R.C. 2925.11(A), and also in not merging involuntary manslaughter, R.C. 2903.04(A), and corrupting another with drugs, R.C. 2925.02(A)(5); also discussed, the Reagan Tokes Act is constitutional.

Sentencing. State v. Toney | 2022-Ohio-1319 | 8th Appellate District | 4/21/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Vince | 2022-Ohio-1320 | 8th Appellate District | 4/21/22 In state's appeal of sentence imposed in conviction of felony offenses subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, the trial court erred by finding the Law unconstitutional and imposing a definite sentence pursuant to the statutes in effect prior to the enactment of the Law in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional; remanded for re-sentencing.

Felonious assault. State v. Noah | 2022-Ohio-1315 | 8th Appellate District | 4/21/22 Conviction of felonious assault, R.C. 2903.11, was supported by sufficient evidence where surveillance video, victim's testimony and hospital medical records provided evidence that victim suffered a concussion and a broken nose as a result of the attack on him by appellant and another person that constituted "serious physical harm" as defined in R.C. 2901.01(A)(5)(a) and (e).

Search. State v. Malone | 2022-Ohio-1409 | 4th Appellate District | 4/21/22 In a conviction of aggravated drug possession, R.C. 2925.11(A), denial of motion to suppress was not error since officer had reasonable, articulable cause to make a traffic stop and, during stop, officer learned of arrest warrant for appellant, conducted a search of appellant and found "crystal meth" in appellant's wallet, and in subsequent search of vehicle after appellant admitted he had drugs, officer found a safe on the front passenger seat, obtained key to safe from appellant and found additional drugs in the safe; also, under the automobile exception to the warrant requirement, officers may search containers in a vehicle if they have probable cause to believe that contraband or evidence may be concealed inside the vehicle.

Sentencing. State v. Maddox | 2022-Ohio-1350 | 6th Appellate District | 4/22/22 On remand from the Ohio Supreme Court to consider constitutional challenge to the sentencing provisions of the Reagan Tokes Act in appeal of sentence imposed pursuant to the Act, the court of appeals holds that the Reagan Tokes Law does not violate appellant's constitutional rights to trial by jury and due process of law and does not violate the constitutional requirement of separation of powers.

Search. State v. Evenson | 2022-Ohio-1336 | 1st Appellate District | 4/22/22 In a conviction of, inter alia, six counts of receiving stolen property, denial of motion to suppress was not error where initial search following no response to officer's "knock and talk" at appellant's house did not violate Fourth Amendment since a long driveway led to storage buildings and was not part of the driveway to appellant's house, and thus not part of appellant's curtilage, and the "open fields" doctrine also applied, so the discovery of stolen property was not an illegal search since officer did not enter any buildings before obtaining a warrant, and probable cause supported the warrant since the stolen equipment had a "pinging device" and officer observed tracks of the type of equipment stolen leading to the building.

Arson registry. State v. Daniel | 2022-Ohio-1348 | 6th Appellate District | 4/22/22 In a conviction by plea of arson, R.C. 2909.03(B)(1) and (D)(1) and (2), challenge to the imposition of life-time registration to arson registry, R.C. 2909.15(D)(2)(b), as an unconstitutional violation of separation of powers because it does not permit the trial judge to reduce the period of registration unless requested by the prosecutor and the investigating law enforcement agency is without merit since reducing an arson offender's registration period under R.C. 2909.15(D)(2)(b) does not involve the sentencing of a defendant convicted of a crime; contra State v. Dingus, conflict certified to the Ohio Supreme Court.

Sentencing. State v. Ratliff | 2022-Ohio-1372 | 5th Appellate District | 4/22/22 In a conviction of aggravated possession of drugs, R.C. 2925.11(A) and (C)(1)(d), imposition of an indefinite prison term of a minimum of seven years and a maximum prison term of 10.5 years pursuant to the Reagan Tokes Act was not error since challenge to the constitutionality of the Act is without merit since the Act does not violate due process, the separation of powers doctrine, the right to a jury trial or the right to equal protection.

Search. State v. Triplett | 2022-Ohio-1371 | 5th Appellate District | 4/22/22 In a conviction of drug offenses, denial of motion to suppress was not error since officer had a reasonable suspicion of a traffic violation where appellant failed to leave sufficient space between his vehicle and the vehicle in front of him, R.C. 4511.34(A), and the stop was not unduly prolonged where marijuana was seen in the vehicle by an officer as the

passengers were exiting while appellant was on his phone trying to locate the rental agreement for the vehicle that he was driving.

Suppression. State v. Greene | 2022-Ohio-1357 | 3rd Appellate District | 4/25/22 In a conviction of, inter alia, aggravated vehicular assault, R.C. 2903.08(A)(1)(a), and OVI, R.C. 2903.08(A)(1)(a), the trial court did not err by denying motion to suppress appellant's refusal to submit to a chemical breath test since the results of a chemical breath test are admissible, Anistik, and the fact that appellant was not under arrest when he refused to submit to the test is without merit since that evidence is admissible regardless of a defendant's arrest status at the time of the request, Cunningham.

New trial. State v. Reed | 2022-Ohio-1327 | Supreme Court of Ohio | 4/26/22 Judgment of the court of appeals is reversed, and cause is remanded to the trial court to consider appellant's motion for leave to file a delayed motion for a new trial in light of State v. Bethel, __ Ohio St.3d __, 2022-Ohio-783, __ N.E.3d __.

Jury. State v. Stalder | 2022-Ohio-1386 | 5th Appellate District | 4/26/22 In a conviction of sexual imposition, R.C. 2907.06(A)(1), the trial court erred in finding the requirements of a Batson challenge inapplicable to instances of alleged gender discrimination and by failing to require the state to provide a gender-neutral explanation for the exclusion of two male prospective jurors.

Sentencing. In re Cases Held for the Decision in State v. Maddox | 2022-Ohio-1352 | Supreme Court of Ohio | 4/27/22 Disposition of cases that were held for the decision in State v. Maddox, ___ Ohio St.3d ___, 2022-Ohio-764, ___ N.E.3d ___.

Search. State v. Hampton | 2022-Ohio-1380 | 1st Appellate District | 4/27/22 In a conviction of drug-related offenses, grant of motion to suppress was not error since traffic stop was not supported by probable cause or reasonable suspicion of a traffic violation where the state failed to provide specific and articulable facts giving rise to suspected criminal activity that required further investigation by the officer by merely relying on the fact that appellant was driving at a distance behind another vehicle at less than a car length for every 10 miles per hour where the trial court's analysis of the surrounding conditions comported with R.C. 4511.34.

Rape. State v. Virostek | 2022-Ohio-1397 | 8th Appellate District | 4/28/22 In a conviction of, inter alia, rape where the other person's ability to resist or consent is substantially impaired, R.C. 2907.02(A)(1)(c), and appellant was found not guilty of rape by force or threat of force, R.C. 2907.02(A)(2), claim that the state should not have been permitted to argue both force and substantial impairment based on a single act of rape is without merit since there was evidence presented that could support both forcible rape and substantial rape, and it was appropriate for the jury to be instructed on both.

Sentencing. State v. Olsen | 2022-Ohio-1402 | 8th Appellate District | 4/28/22 In a conviction by plea of, inter alia, felonious assault, attempted felonious assault and criminal damaging, imposition of consecutive prison sentences of a minimum of nine years and a maximum of 12.5 years was not error where the trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and made the required R.C. 2929.14(C)(4) findings for the imposition of consecutive sentences; also, the Reagan Tokes Law is constitutional, and the trial court was not required to inform appellant at the plea hearing of the amount of restitution that would be ordered.

Weapons offense. State v. Smith | 2022-Ohio-1411 | 8th Appellate District | 4/28/22 In convictions of having weapons while under disability, R.C. 2923.13(A)(2), in two actions for events on separate dates did not meet the sufficiency and weight of evidence standards in one action where, although appellant was in the area in which a victim was murdered with a firearm and appellant's wife's testimony that she told appellant she was having an affair with the deceased tended to show that appellant had a motive to shoot the victim, motive is not an element of having weapons while under disability under R.C. 2923.13(A)(2); conviction by plea in other action was affirmed since plea was validly made since the trial court complied with Crim.R. 11(C)(2).

Right to counsel. State v. Jordan | 2022-Ohio-1480 | 4th Appellate District | 4/28/22 In a drug and possessing criminal tools prosecution against two defendants in a joint trial, the trial court did not err in granting state's motion to disqualify appellant's attorney who was representing both defendants since waivers by the defendants do not cure problems created by the multiple representation and, since potential conflicts of interest exist with the dual representation of appellant and her co-defendant in light of the nature of the traffic stop and discovery of controlled substances, it is foreseeable that conflicts between the co-defendants may arise throughout the proceeding.

Expert witness. State v. Ferricci | 2022-Ohio-1393 | 8th Appellate District | 4/28/22 In a conviction of rape of a minor following a mistrial, the trial court erred in allowing an expert witness to testify as a state witness who testified as an expert for the defense at the prior trial, and thus became an agent of the defense pursuant to Crim.R. 16(J) once the defense decided not to call her as a witness at retrial, and her report was subject to the protections of the work-product privilege under the criminal rules; moreover, the state failed to follow the discovery rules of Crim.R. 16(K), and the admission of the expert's testimony became unduly prejudicial by the state's repeated statements in closing arguments that the expert had been retained by the defense; remanded for new trial.

Bond/Appeal. Cleveland v. Kopilchak | 2022-Ohio-1408 | 8th Appellate District | 4/28/22 In a conviction of first-degree misdemeanor domestic violence and subsequent failure to appear at a hearing for alleged violation of community control, appeal of denial of bond by the municipal court is not a final, appealable order under R.C. 2937.222(D) since that section is limited to orders denying bail issued by common pleas courts in cases in which a defendant has been charged with offenses not at issue in the present action; also, during pendency of this action, appellant was released on personal bond, and he has an adequate remedy to challenge any subsequent bond denial and incarceration by a habeas corpus action.

Sentencing. State v. Walker | 2022-Ohio-1404 | 8th Appellate District | 4/28/22 In a conviction by plea of a felony offense subject to imposition of minimum and maximum sentences pursuant to the Reagan Tokes Law, challenge to the constitutionality of the Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Right to counsel. State v. Washington | 2022-Ohio-1426 | 2nd Appellate District | 4/29/22 In a conviction of, inter alia, aggravated burglary, denial of defense counsel's motion to withdraw prior to trial for a potential conflict of interest was not error where, although both defense counsel and defendant believed counsel was under a pending criminal investigation that may have been related to defendant's case and created a potential conflict of interest, an actual conflict of interest is required, and the trial court's inquiry established that although the alleged investigation stemmed from defense counsel's representation of defendant in the case before the court, it involved conduct unrelated to the issues to be presented at trial.

Dismissal. State v. Allen | 2022-Ohio-1419 | 2nd Appellate District | 4/29/22 In an appeal by the state of Crim. R. 48(B) dismissal of a prosecution of fifth-degree felony possession of marijuana, the trial court erred in dismissing action since its reliance on the subsequent issuance of a medical marijuana card, that no one was harmed, and that no meaningful punishment could be imposed are insufficient reasons for a Crim.R. 48(B) dismissal since when defendant bought the marijuana, she did not have a marijuana card and did not purchase the marijuana at a licensed facility, and the amount she possessed was in excess of the amount allowed even if she had a card.

Suppression. State v. Farra | 2022-Ohio-1421 | 2nd Appellate District | 4/29/22 In a bench conviction of, inter alia, aggravated burglary, denial of motion to suppress was not error where appellant validly waived his Miranda rights and no evidence was presented that he was under the influence of drugs or suffering from severe mental illness or an intellectual disability at the time of his hospital interview by officers.

Evidence. State v. Furmage | 2022-Ohio-1465 | 11th Appellate District | 5/2/22 In a conviction of, inter alia, eight counts of rape of appellant's minor stepdaughter, R.C. 2907.02(A)(1)(b), the trial court did not err in the admission of opinion testimony of the victim's mother that appellant, her husband, wrote the letter found in his truck to the victim because her testimony was rationally based upon her perception of the letter since she had been married to appellant for several years and familiar with his writing style, and her opinion also served to assist in determination of the authorship of the letter that was a fact in issue, Evid.R. 701.

Joinder. State v. Carter | 2022-Ohio-1444 | 3rd Appellate District | 5/2/22 In a conviction of, inter alia, five counts of rape in one case involving two victims, the trial court did not err by joining the rape cases for trial, Crim.R. 8(A), jury was presented with one victim's testimony of rapes that occurred in 2018, and another victim's testimony regarding rapes that occurred in 2015, the evidence detailed the location of incidents and what appellant had allegedly done to each victim, and there was no indication the jury was unable to segregate proof or that the testimony was anything other than simple and direct.

Sentencing. State v. Burris | 2022-Ohio-1481 | 5th Appellate District | 5/3/22 In a conviction of aggravated possession of drugs, R.C. 2925.11(A) and (C)(1)(c), imposition of an indefinite prison sentence of a minimum term of six years and a maximum term of nine years pursuant to the Reagan Tokes Law is constitutional since the Law does not violate appellant's right to due process, the separation of powers is not violated and the right to a jury trial is not violated.

Domestic violence/Transferred intent. State v. Okey | 2022-Ohio-1541 | 5th Appellate District | 5/4/22 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where the defendant-former husband of victim testified that he intended to hit former wife's current husband, but hit former wife by mistake, and thus the doctrine of transferred intent applied, defendant is criminally culpable for the harm caused, In re T.K, and the trier of fact did not lose its way in resolving conflicts in evidence or in making its credibility determinations.

Venue. State v. Moore | 2022-Ohio-1460 | Supreme Court of Ohio | 5/5/22 Venue for the crime of retaliation is not proper in the county where the alleged victim previously pursued criminal charges against the defendant and where the alleged victim was located when the alleged retaliation occurred since the defendant did not take any action in the county where the alleged victim was located, R.C. 2921.05(B), Ohio Const., Art. 1, Sec. 10.

Hearsay. State v. Donlow | 2022-Ohio-1518 | 7th Appellate District | 5/5/22 In a conviction of, inter alia, attempted aggravated murder, the trial court did not err in the admission of the attempted murder victim's hearsay statements under the forfeiture by wrongdoing hearsay exception, Evid.R. 804(B)(6), after the witness refused to testify while on the stand because he was threatened by appellant if he did so, and prosecutor's testimony of what the victim told him did not violate Prof. Cond.R. 3.7.

Sentencing. State v. Scott | 2022-Ohio-1486 | 8th Appellate District | 5/5/22 In a conviction by plea of, inter alia, two counts of felonious assault, imposition of concurrent and consecutive prison sentences totaling 12.5 to 16.5 years was not error where the trial court made the required R.C. 2929.14(C)(4) findings for the imposition of consecutive sentences at the sentencing hearing and in the judgment entry, and the record supports the sentences; also, challenge to the constitutionality of the Reagan Tokes Law is without merit in light of this circuit's en banc decision in Delvallie holding that the Law is constitutional.

Sentencing. State v. Hervey | 2022-Ohio-1498 | 8th Appellate District | 5/5/22 In a conviction by plea of four counts of gross sexual imposition, R.C. 2907.05(A)(1), the trial court failed to make the complete proportionality finding required for the imposition of consecutive sentences pursuant to R.C. 2929.14(C)(4) at the sentencing hearing by stating consecutive sentences were not disproportionate to the seriousness of appellant's conduct, but without making any finding that the sentences were not disproportionate to the danger appellant poses to the public; remanded for re-sentencing.

Criminal (Cont.)

Appeal. State v. Doss | 2022-Ohio-1507 | 8th Appellate District | 5/5/22 Following court of appeals' affirmance of convictions of, inter alia, aggravated vehicular homicide and OVI, the trial court did not err in denying pro se post-appeal motion to vacate plea and to conduct a re-sentencing hearing based on alleged failure of the court to provide the R.C. 2929.19(B)(2)(c) statutory notifications pursuant to the Reagan Tokes Law, nor did the trial court err in denying a motion to vacate plea since appellant failed to raise these issues on direct appeal, and thus those claims are barred by res judicata, Henderson and Harper.

New trial. State v. Martin | 2022-Ohio-1494 | 8th Appellate District | 5/5/22 Following a 2008 conviction of murder that was affirmed, the trial court erred in denying without a hearing appellant's 2020 motion for leave to file a motion for new trial on the basis of newly discovered evidence of a witness' recantation since Crim.R. 33(B) does not impose a reasonable time requirement for the filing of a motion for a new trial, Bethel, and appellant is entitled to a hearing to demonstrate that he was unavoidably prevented from discovering the new evidence within the 120-day time period based on his post-conviction relief counsel's ineffective assistance involving a trial witness' recantation.

Plea. State v. Fenstermaker | 2022-Ohio-1540 | 5th Appellate District | 5/6/22 In convictions by plea in a case of sex offenses and a case of weapons offenses, the record reflects that the trial court strictly complied with Crim.R.11(C)(2)(c) in the sex offense case by advising defendant of the required constitutional rights; as for the weapons case in which the defendant admitted that he committed the offenses, being the functional equivalent to entering a plea of "guilty," the court did not reference the sex offenses case during the plea colloquy or otherwise advise defendant of his constitutional rights, so the court's advisement did not comply with Crim.R.11(C)(2)(c).

Falsification/Obstructing official business/Fictitious license plates. State v. Pelmear | 2022-Ohio-1534 | 6th Appellate District | 5/6/22 Conviction of misdemeanors falsification, obstructing official business, and having fictitious license plates, arising out of defendant's representations during a traffic stop that license plates of the driver stopped were valid, was error since the state did not present evidence that defendant was not a member of the Cherokee nation, as he claimed, defendant did not obstruct official business since officer had agreed to delay the investigation, and since the state did not submit its LEADS report into evidence and officer's testimony regarding the results of the report was hearsay, there was insufficient evidence of fictitious license plates.

Ineffective assistance. State v. Hopings | 2022-Ohio-1532 | 6th Appellate District | 5/6/22 In defendant's conviction of sex offenses, defense counsel did not provide ineffective assistance during jury selection by declining to challenge juror who made a comment indicating that defendant should plead to the offenses where juror's responses to questions in chambers revealed no evidence that defense counsel's decision to keep her on the jury fell below an objective standard of reasonable representation since the juror stated that she could be fair and reasonable.

Sentencing. State v. Householder | 2022-Ohio-1542 | 5th Appellate District | 5/6/22 In conviction by plea to, inter alia, second-degree felony trafficking in drugs, defendant's challenge to the imposition of minimum and maximum sentences pursuant to the Reagan Tokes Act as violating defendant's constitutional rights to trial by jury, equal protection and due process of law, and as also violating the constitutional requirement of separation of powers, is rejected by the court of appeals for the reasons stated in the dissenting opinion in Wolfe, 2020-Ohio-5501.

Search. State v. Marshall | 2022-Ohio-1533 | 6th Appellate District | 5/6/22 In appeal by state of order granting defendant's motion to suppress in prosecution of drug offenses, trial court did not err in granting the motion where defendant was found in the bathroom of his motel room, he was unresponsive, and his status as a guest had not yet terminated when officer conducted a search and located drugs in the room; officer was not lawfully in the motel room when paramedics were already attending to defendant, and there was no indication that the items seized were in plain view or that the items would have been discovered by the police through the housekeeper pursuant to the inevitable discovery rule.

Hearsay/Conspiracy. State v. Wright | 2022-Ohio-1537 | 6th Appellate District | 5/6/22 In appellant's conviction of, inter alia, aggravated murder, testimony of a co-defendant regarding a conversation between two other co-defendants that occurred prior to the offenses charged was not improper hearsay testimony since there was sufficient evidence to establish the existence of a conspiracy involving the witness and the other co-defendants, including appellant, Evid.R. 801(D)(2)(e).

Sentencing/Challenge. State v. Walker | 2022-Ohio-1546 | 12th Appellate District | 5/9/22 In conviction by plea to possession of fentanyl, defendant's challenge to the constitutionality of the imposition of an indefinite prison term pursuant to the Reagan Tokes Law of a minimum of five years and maximum of seven and a half years is forfeited by defendant's failure to raise the issue with the trial court, Hodgkin.

Involuntary manslaughter. State v. Crawford | 2022-Ohio-1509 | Supreme Court of Ohio | 5/10/22 Conviction of involuntary manslaughter, R.C. 2903.04(A), was supported by sufficient evidence that defendant instigated a disagreement, threatened physical violence, escalated the disagreement, brandished a firearm, shot the firearm and a person died as a proximate result of defendant having a weapon while under disability and, since the predicate offense is having a weapon while under disability, there is no requirement the underlying reason for the disability be causally related to the victim's death.

Education

Employment/Due process. Hobbs v. Pickaway-Ross Career & Technology Ctr. Bd. of Edn. | 2022-Ohio-921 | 4th Appellate District | 3/21/22 Non-teaching school employee's termination, affirmed by trial court on reasoning that there was a preponderance of reliable, probative and substantial evidence that employee's actions constituted malfeasance is affirmed where employee waived any due process argument pursuant to the parties' stipulations, which in pertinent part provided that employee agreed to

waive any and all arguments regarding procedural issues and requirements that were not followed or properly provided, and R.C. 3319.16, which provides terminated teachers a hearing before a referee, does not apply to instant non-teaching employee.

Drug testing policy/Standing. Langin v. Sheffield-Sheffield Lake Bd. of Edn. | 2022-Ohio-879 | 9th Appellate District | 3/21/22 In parents' action on behalf of student challenging the constitutionality of student drug testing policy enacted by public school board of education, trial court did not err in granting board's motion to dismiss since student had graduated and was no longer subject to drug testing policy and therefore lacked standing; also, there is no exemption from governmental immunity under R.C. 2744.09 for a private cause of action sounding in tort such as student's alleged anticipated adverse long-term consequences from being denied participation in extracurricular activities.

Contract/Breach/Limitations. Bremar v. Ohio Univ. | 2022-Ohio-1382 | 10th Appellate District | 4/26/22 In student's action against university alleging, inter alia, breach of contract for his dismissal from college program in violation of agreement outlined in college manual, summary judgment in favor of university based on the R.C. 2743.16 statute of limitations was error since student progress committee's letter recommending dismissal and notifying student of the right to appeal did not start the statute of limitations to run because the student did not suffer actual harm from knowledge of possible dismissal, and the student's cause of action accrued when the dean denied his appeal, so the action was timely filed.

Elections and Campaign Finance

Redistricting. League of Women Voters of Ohio v. Ohio Redistricting Comm. | 2022-Ohio-789 | Supreme Court of Ohio | 3/17/22 In original action by relator pursuant to Ohio Const. Art. XI, Sec. 9, challenging the second Ohio Redistricting Commission's General Assembly-voting redistricting plan that was adopted on February 24, 2022, the Ohio Supreme Court holds that the plan is invalid for not meeting the standards in Ohio Const., Art. XI, Secs. 6(A) and 6(B) requiring a plan that is proportional and that does not favor a political party; pursuant to Art. XI, Sec. 9(B), the Commission is ordered to be reconstituted under Art. XI, Sec. 1 and to adopt an entirely new General Assembly-district plan in conformity with the Ohio Constitution.

Declaration of candidacy. State ex rel. Maras v. LaRose | 2022-Ohio-866 | Supreme Court of Ohio | 3/18/22 Candidate's petition for writ of mandamus to compel secretary of state to send her declaration of candidacy to the county boards of election for them to conduct a new signature verification of her part-petitions is denied since the candidate failed to comply with the R.C. 3513.09 requirement that if a petition consists of more than one part-petition, then the declaration of candidacy shall be copied on each other separate petition paper before the signature[s] of electors are placed on it, and many of the county boards invalidated the candidate's entire part petitions due to the absence of a declaration of candidacy.

Liquor option/Affidavit. State ex rel. Brubaker v. Lawrence Cty. Bd. of Elections | 2022-Ohio-1087 | Supreme Court of Ohio | 3/31/22 Petition for writ of mandamus to compel board of elections to place a local liquor option on upcoming primary-election ballot is denied since petitioner did not comply with the R.C. 4301.33(A) requirements to include with the liquor-option petition an affidavit certifying that he gave notice to all permit holders who would be affected by the measure, if any, and to provide a list of those permit holders to the petition signers at the time of their signing; petitioner's arguments that he be excused from the requirements are without merit since the statute requires strict compliance, and even if there are no affected permit holders, a petitioner must provide an affidavit.

Redistricting. League of Women Voters of Ohio v. Ohio Redistricting Comm. | 2022-Ohio-1235 | Supreme Court of Ohio | 4/14/22 In challenge to the state redistricting commission's third revised redistricting plan, the Ohio Supreme Court sustained petitioners' objections to the plan under Ohio Const. Art. XI, Secs. 6(A) and 6(B), invalidated the plan in its entirety and ordered the commission to be reconstituted, to convene, and to draft and adopt an entirely new redistricting plan that meets constitutional requirements, including Art. XI, Secs. 6(A) and 6(B); the court concluded that the third revised plan was no more than a modification of the second revised plan and included only minor changes from its predecessor that was invalidated as unconstitutional.

Certification of candidate/Valid signatures. Young v. Franklin Cty. Bd. of Elections | 2022-Ohio-1432 | 10th Appellate District | 4/29/22 Relator's petition for a writ of a mandamus to compel respondent-board of elections to certify him as a candidate for primary election is denied since relator's declaration of candidacy and petitions submitted to respondent did not contain the minimum number of signatures required by R.C. 3513.05 where respondent determined that a number of the signatures were invalid, and relator's request for reconsideration in which he submitted affidavits from persons who had signed his petition but whose signatures were deemed invalid did not constitute clear and convincing evidence that the signatures were valid under Ohio law.

Environmental and Natural Resources

Water pollution. State ex rel. Yost v. Rover Pipeline, L.L.C. | 2022-Ohio-766 | Supreme Court of Ohio | 3/17/22 In state's complaint against pipeline company and subcontractors, alleging that pipeline caused pollution by illegally discharging drilling fluids into Ohio's waters where pipeline applied for certification from the state that any discharge into the state's navigable waters would comply with applicable provisions of federal law, 33 U.S.C. 1341(a)(1), dismissal of the state's complaint on reasoning that the state had waived its ability to participate in the certification process when it did not respond to pipeline's application within one year was error since the waiver applies only to issues related to the section 401 certification, the contours of which were not established by the trial court, so the court of appeals' judgment affirming the trial court is reversed and the case is remanded to the trial court to determine whether the violations alleged by the state can be prosecuted or whether the state has waived the right to take action.

Environmental and Natural Resources (Cont.)

Mineral interests/Quiet title/Heirs. Hamm v. Lorain Coal & Dock Co. | 2022-Ohio-1048 | 7th Appellate District | 3/30/22 In property owners' action against heirs of coal company shareholders seeking to quiet title to oil and gas rights on property, summary judgment for owners was not error since there was no evidence that dissolved coal company conveyed mineral interests to heirs of its shareholders, and although one heir filed notice to preserve, there is no evidence that any mineral interests passed to her, and evidence showed that all shareholders in coal company received cash distribution on its dissolution, so there were no longer shares to inherit.

Mineral interests/Evidence. Hamm v. Lorain Coal & Dock Co. | 2022-Ohio-1305 | 7th Appellate District | 3/30/22 In property owners' action seeking to quiet title to oil and gas interests against former shareholders of dissolved coal company which had owned mineral interests, trial court erred in awarding to owners compensatory damages on claims of, inter alia, slander of title where, although no interest holder filed a claim to preserve and therefore abandonment was found pursuant to R.C. 4301.56, shareholders were not allowed to present evidence that title was disputed or to show how or when owners acquired title to the mineral rights.

Mineral interests. Bates v. Bates | 2022-Ohio-1055 | 7th Appellate District | 3/31/22 In plaintiffs' action against defendants-counterclaimants seeking to quiet title to fractional ownership of oil and gas rights, summary judgment in favor of plaintiffs was not error since reservation of oil and gas interest was not only a life estate, even though the deed reserved life estate in surface rights, and estoppel by deed does not apply to oil and gas interest because defendants accepted deed and cannot deny reservation under conveyance that could be passed to heirs.

Contract/Breach/Conversion. Zimmerview Dairy Farms, L.L.C. v. Protege Energy III, L.L.C. | 2022-Ohio-1282 | 4th Appellate District | 4/11/22 In plaintiffs-property owners' action for breach of contract, conversion and trespass, arising from damage to property by defendant-oil well drilling energy company, trial court did not err in awarding damages to plaintiffs since there was some competent credible evidence supporting the determination that defendant had an ongoing duty to restore property, and although the contract clause concerning topsoil was ambiguous, extrinsic evidence demonstrated the intent of parties and the proof of elements for breach of contract and conversion claims.

Mineral interests. Stadler v. Gatchell | 2022-Ohio-1325 | 7th Appellate District | 4/15/22 In property owners' action against energy company seeking a declaratory judgment and to quiet title to reservation of mineral rights on property, trial court did not err in granting owners' summary judgment since owners obtained the reservation through the Dormant Mineral Act and were entitled to the resulting signing bonus and royalties; owners' settlement agreement providing partial interest in rights to heirs is enforced, merged into final summary judgment, and remained effective, R.C. 5303.01, 2505.02.

Estate Planning, Trust and Probate

Will contest/Genetic testing. Powell v. Williams | 2022-Ohio-526 | 8th Appellate District | 2/24/22 In plaintiffs' action contesting will and motion for genetic testing to show that they were decedent's natural-born children, the trial court did not err in dismissing the will contest since plaintiffs lacked standing pursuant to R.C. 2107.71(A) because they were not named as beneficiaries in decedent's will, and the court did not err in denying plaintiffs' genetics testing motion for lack of jurisdiction because the statute of limitations in determining the existence or non-existence of a parent-child relationship had expired, R.C. 3111.381.

Survival/Wrongful death. In re Estate of Riddle | 2022-Ohio-644 | 6th Appellate District | 3/4/22 In estate's application to probate court requesting that all proceeds from wrongful death and survival claim settlement be allocated as a survival claim, trial court did not err in allocating a small portion of settlement as wrongful death proceeds since decedent's initiation of litigation was for his pain and suffering prior to death, so the proceeds should be characterized predominantly as and for the survival claim, and daughter's contention that the entire settlement should be allocated as wrongful death proceeds was not supported by the court's comprehensive analysis, R.C. 2305.21 and 2125.02.

Trust/In terrorem clause. In re Estate of Reck | 2022-Ohio-719 | 2nd Appellate District | 3/11/22 Following appellant-daughter of decedent's filing of declaratory action challenging amendment to trust that removed her as successor trustee where appellant filed a motion to remove appellee-daughter as executor of their father's estate, the trial court did not err in granting summary judgment to appellee on reasoning that appellant lacked standing since her act of filing the declaratory judgment complaint in the common pleas court triggered application of the in terrorem clause in the trust, thereby divesting appellant of her status as a beneficiary of the trust, resulting in her lack of standing, Bradford.

Guardianship/Purpose/Evidence. In re Guardianship of E.M. | 2022-Ohio-862 | 6th Appellate District | 3/18/22 Denial of mother's application to terminate paternal grandparents' guardianship of child with a significant medical issue was error, even though mother consented to indefinite guardianship and child's medical issues had not yet resolved, since trial court limited mother's testimony about the formation and purpose of the guardianship, and evidence as to whether the purpose of the guardianship was child's health concerns or the provision of monetary assistance was important in determining if the guardianship's purpose had been fulfilled and was no longer necessary, R.C. 2101.24.

Administrator. In re Estate of Maybury | 2022-Ohio-977 | 5th Appellate District | 3/25/22 In mother's application to administer estate of decedent-daughter and motion to vacate the appointment of decedent's former husband-father of decedent's children as administrator, the trial court did not err in denying the motion since the R.C. 2105.05 statute of descent and distribution provides that decedent's children are entitled to inherit from her, decedent's mother had no personal interest in estate and consequently no capacity to attack former husband's appointment, and because children were minors and unsuitable to administer estate, former husband was appointed pursuant to R.C. 2113.06.

Contract/Evidence. In re Estate of Stover | 2022-Ohio-989 | 3rd Appellate District | 3/28/22 Dismissal of decedent's son's action against executor seeking enforcement of terms of will as it related to a contract to purchase land was error since the contract to purchase land unambiguously stated the purchase price and the basis for the price, decedent's will referenced the contract with specific instructions to executor regarding decedent's intentions, and executor's allegation that a separate writing referenced in the contract and detailing son's assistance to parents was not attached was not, by itself, enough to open the door to extrinsic evidence or to render the contract invalid.

Administrator's claim. In re Estate of Gates | 2022-Ohio-1091 | 5th Appellate District | 3/31/22 In administrator's application for allowance of claim against mother's estate for reimbursement for repairs, improvements and maintenance to mother's property, trial court erred in finding that application was filed untimely where, although general creditor claims would have been filed untimely pursuant to R.C. 2117.06, a claim brought by administrator was within time period specified under R.C. 2117.02.

Trust beneficiary/Judicial estoppel. Galavich v. Hales | 2022-Ohio-1121 | 7th Appellate District | 3/31/22 In plaintiff's breach of trust action against defendants-estate of mother's trustee and beneficiary of trustee's estate, alleging that he was beneficiary of mother's trust, summary judgment in favor of defendants was not error where mother created express trust with plaintiff as intended beneficiary of farm, but plaintiff knowingly failed to disclose inheritance in bankruptcy proceedings after death of mother, and doctrine of judicial estoppel forecloses his ability to benefit from trust.

Involuntary commitment. In re N.E. | 2022-Ohio-1184 | 1st Appellate District | 4/8/22 In involuntary commitment procedure, trial court did not err in finding that respondent was mentally ill and subject to hospitalization where mental-illness affidavit included not only clinical conclusions and diagnoses, but also facts and details of specific events which led to respondent's emergency hospitalization, and the factual allegations were sufficient to establish probable cause, R.C. 5122.11, that respondent was mentally ill under R.C. 5122.01(B).

Law of the case/Remand. Durkin v. Williams | 2022-Ohio-1416 | Supreme Court of Ohio | 5/3/22 Executor's petition for a writ of prohibition to prevent judge's appointment of a special master commissioner under R.C. 2101.06 to investigate executor's actions is denied where executor's contention that the judge's appointment disregards the law of the case established in earlier litigation in which the court of appeals remanded the case to the trial court is without merit since the court of appeals' remand in the earlier appeal did not specifically limit the proceedings in a manner that precluded the judge's appointment of the special master commissioner to investigate executor's actions.

Spousal support. Mayer v. Mayer | 2022-Ohio-533 | 10th Appellate District | 2/24/22 In divorce action in which husband disputed calculation of wife's income for purposes of spousal support, the trial court erred in excluding wife's long-term incentive plan bonus compensation from her gross income since allowing wife to retain all future bonuses as her separate property would provide her a windfall, husband was not found to be underemployed, and even if amount of awarded spousal support is sufficient to permit husband to enjoy established standard of living as set forth in R.C. 3105.18(C)(1)(g), support may not be based on one factor in isolation.

Adoption/Consent. In re Adoption of D.W.- E.H. | 2022-Ohio-528 | 8th Appellate District | 2/24/22 In stepfather's petition to adopt child, the trial court did not err in finding that father's consent was required where father's lack of contact with child was justified because mother blocked father on social media, father's visits with child were suspended due to pandemic, when restrictions were lifted mother did not facilitate visits, mother would not answer father's calls, father's financial status made him unable to pursue further legal action to enforce visitation rights, and stepfather created impediments to communication, R.C. 3107.07.

Child support/Deviation from guideline. Rummelhoff v. Rummelhoff | 2022-Ohio-1224 | 1st Appellate District | 2/25/22 In divorce action in which husband filed an application for reconsideration and case was remanded, the trial court erred on remand in its child support deviations from the guideline where deviation based on relative financial resources must be based on actual financial resources and not on husband's ability to earn more than he was currently earning, R.C. 3119.23(E), and health insurance premiums are not intended to be in-kind contributions under R.C. 3119.23(I) and should not be a basis for deviation.

Attorney fees. Gauthier v. Gauthier | 2022-Ohio-541 | 1st Appellate District | 2/25/22 In divorce action in which husband sought to enforce parties' addendum agreement, alleging that wife had breached the agreement concerning division of assets, where wife was the prevailing party, the trial court erred in awarding to wife attorney fees and costs since, although the fees were recoverable under terms of addendum, husband did not have the opportunity to examine wife's counsel on the reasonableness of his fees, and cross-examination of wife's expert was not a substitute for cross-examination of counsel whose fees were in dispute.

Annulment. Nwankwo v. Uzodinma | 2022-Ohio-565 | 12th Appellate District | 2/28/22 In wife's action seeking annulment of marriage on ground of fraud in the inducement, the trial court did not err in granting annulment since reliable evidence demonstrated that husband married wife to obtain citizenship, that after obtaining citizenship, husband secretly prepared his financial and practical exit from marriage by opening a personal bank account and deleting social media account, and that because he obtained wife's consent to marriage by fraud and she did not cohabit with him as his wife after she gained full knowledge of the facts, annulment is allowed pursuant to R.C. 3105.31(D).

Spousal support. Nichols v. Nichols | 2022-Ohio-575 | 3rd Appellate District | 2/28/22 In divorce action in which husband challenged the length of spousal support award to wife, trial court's award of support was error where, although the monthly amount of support was appropriately reduced after imputation of income to wife, the length of support was increased to exceed the length of the marriage, and the total amount of support awarded over an increased time period was more than double the amount originally awarded.

Decree modification. Williams v. Williams | 2022-Ohio-599 | 1st Appellate District | 3/2/22 In divorce action in which wife sought modification of divorce decree to allow her to receive her portion of retirement in a lump-sum payment, where trial court ruled in favor of husband, the court did not err in denying wife's motion for relief from judgment since the decree's provision for modification of property division was prohibited without consent of both parties under R.C. 3105.171(I); wife made no allegations of fraud or newly discovered evidence, so she was limited to seeking relief under Civ.R. 60(B)(1) for mistake, inadvertence, surprise or excusable neglect, which was unavailing without the required consent.

Dissolution/Mutual mistake. Quesinberry v. Quesinberry | 2022-Ohio-635 | 2nd Appellate District | 3/4/22 In dissolution of marriage action in which decree contained a separation agreement, trial court erred in denying wife's Civ.R. 60(B) motion to vacate the decree where the court reasoned that vacating the separation agreement would be an unauthorized modification of the parties' agreement; vacating an entire dissolution decree is not the same as modifying terms of separation agreement contained within the decree, and because there was a mutual mistake concerning spousal support in the separation agreement, there was no valid separation agreement on which the dissolution decree could have been based, Civ.R. 60(B).

Child support/Shared parenting. MacKnight v. MacKnight | 2022-Ohio-648 | 12th Appellate District | 3/7/22 In divorce action in which the parties shared parenting, trial court did not err in imposing child support obligation on husband where, even though he was designated as residential parent for school purposes and had more parenting time than wife, R.C. 3119.24 does not mandate which residential parent is to be named obligor for shared parenting, nothing in R.C. 3119.231 provides that extended parenting time eliminates that parent's obligation to pay child support, and there is disparity in income and earning ability between the parties.

Civil protection order/Termination. McMullen v. Withrow | 2022-Ohio-657 | 11th Appellate District | 3/7/22 In petitioner's action in which trial court granted her a civil stalking protection order against respondent-former fiancé on evidence that respondent threatened to kill petitioner, the court did not err in denying petitioner's motion to terminate order since petitioner failed to show that the original circumstances had materially changed, the court found petitioner's testimony which placed blame for initiation of the order on her parents to be disingenuous, respondent's prior threats showed that he was a danger to petitioner's safety, and petitioner's change of heart did not demonstrate that respondent was no longer a threat, R.C. 2903.214.

Spousal support. Nelson v. Nelson | 2022-Ohio-658 | 11th Appellate District | 3/7/22 In divorce action in which husband disputed amount of spousal support, trial court did not err in its calculations since husband failed to show that amount imputed to him as additional income was exempt from inclusion, the court had necessary information to use income averaging but used its discretion to make a specific decision not to use it, and wife's personal injury settlement was separate property because funds were not commingled, husband's name was not on settlement check, and he was not a party in that action, R.C. 3105.171.

Access to child's records. Cagle v. Cagle | 2022-Ohio-671 | 1st Appellate District | 3/9/22 In divorce action in which mother sought access to child's health and scholastic records, trial court did not err in granting order preventing mother from appearing without written permission at child's school or at office of treatment provider since the court's ruling is a minor restraint on mother's access to child's records where physician's notes from mother's appointments reflect that mother brought literature that she stated was proof of abuse of her child by father and mother made appointments with child's pediatrician to present unsubstantiated allegations of abuse, her disruptive conduct had gone on for years and caused disturbances in child's life, and child is worried that mother's behavior will disrupt his learning and activities, R.C. 3109.051(H)(1).

Custody. Hatfield v. Hatfield | 2022-Ohio-737 | 1st Appellate District | 3/11/22 In divorce action in which father contested the schedule set forth in trial court's shared-parenting plan, the court did not err in its allocation of parenting time where there was evidence that father had stronger interest in reducing his child support obligation than in care-taking of the children, the schedule allows children to sleep in their same beds on weeknights to provide consistency, children are more familiar with mother's home, which is in close proximity to school and relatives, father's bond with one child is strained, and the parties agreed that the court would decide parenting time, R.C. 3109.04.

Custody. Benchic v. Skaggs | 2022-Ohio-913 | 4th Appellate District | 3/16/22 In father's action seeking modification of parenting time and designation as residential parent and legal custodian, trial court erred in denying his motion to modify where the change in circumstances requirement in R.C. 3109.04(E)(1)(a) does not apply to motions to modify parenting time and prior judgment entry added a provision to restore father's parenting time but did not allocate custody, so father should have been allowed to present evidence arising after date of last entry which did allocate custody, R.C. 3109.051.

Adoption. In re A.R.M. | 2022-Ohio-954 | 10th Appellate District | 3/24/22 Dismissal of petition for independent private adoption of child on reasoning that there were procedural errors is reversed since child's out-of-state mother qualifies as a sending agency pursuant to R.C. 5103.23, she complied with all requirements of the statute, and the oversight function of R.C. 5103.16(D) was accomplished through compliance with R.C. 5103.23 and approval of placement from deputy compact administrator of interstate compact on placement of children, after reviewing home study of proposed placement.

Real property/Contempt. Thompkinson v. Grissett | 2022-Ohio-1458 | 7th Appellate District | 3/25/22 In divorce action in which husband filed a motion to show cause for wife's failure to pay second mortgage on house, trial court did not err in denying motion where, although wife did not pay on second mortgage, there was contradictory evidence as to whether she was aware that she had authorization and ability to make payments, husband did not offer evidence that wife's failure to make payments directly impacted his credit score or ability to receive a loan, and wife offered undisputed evidence that husband's credit rating was poor prior to circumstances in question.

Child support/Imputed income. A.L.D. v. L.N.S. | 2022-Ohio-959 | 2nd Appellate District | 3/25/22 In divorce action in which father was incarcerated for a sex offense against his daughter, in granting stepmother's motion for child support, the trial court erred by imputing to father his income level prior to incarceration for purposes of calculating his child support obligation where the court failed to reference any of the factors under R.C. 3119.01(C)(17)(a).

Dissolution/Intervenor. K.L. v. Petruziello | 2022-Ohio-992 | 9th Appellate District | 3/28/22 In action resulting in a judgment of dissolution of marriage where intervenor claimed that he was the father of one of the parties' children and sought a declaration that the dissolution and shared parenting plan were void, the trial court did not err in denying intervenor's motion for relief from judgment since a previous separate judgment established paternity and dismissed intervenor's paternity action, affidavits in dissolution action complied with R.C. 3127.23 by placing court on notice of parenting case, and parties to dissolution were not obligated to give intervenor notice of dissolution proceedings, R.C. 3109.051, Civ.R. 60(B).

Civil protection order. Tabak v. Goodman | 2022-Ohio-1123 | 7th Appellate District | 3/29/22 In petitioner's action seeking a civil stalking protection order against respondent-former friend for continuing to contact her and threatening to contact her ex-boyfriend, trial court did not err in granting order since respondent demonstrated a pattern of conduct in calling and driving by petitioner's house, petitioner's testimony was sufficient to find that respondent caused her mental distress, and mitigating factors such as petitioner contacting respondent did not outweigh need for order, R.C. 2903.211.

Personal property. Donahue v. McKee | 2022-Ohio-1037 | 10th Appellate District | 3/29/22 Dismissal of attorney's action, asserting that his former wife-decedent, who had filed a divorce case against attorney, converted his interest in a motor vehicle that decedent transferred to her son, was not error since, inter alia, R.C. 3103.07 provides that a married person may take, hold, and dispose of property, real or personal, as if unmarried, confirming that Ohio is not a community property state, and temporary restraining order issued by the domestic relations court in the divorce action did not prevent the vehicle transfer where the transfer of title occurred on the same date as the filing of divorce action.

Custody/Change of circumstances. Dotson-Brown v. Brown | 2022-Ohio-1054 | 7th Appellate District | 3/29/22 In divorce action in which husband sought reallocation of parental rights and responsibilities, trial court did not err in finding no change in circumstances warranting reallocation of rights where wife's relocation to another state was not enough to require a finding of a change in circumstances, and modification of custody was not in the best interest of child because mother is more likely to facilitate visitation, child has good relationship with both parents, and child is doing well in current situation, R.C. 3109.04.

Child support. Miano v. Evans | 2022-Ohio-1042 | 9th Appellate District | 3/30/22 In mother's action for a child support order pursuant to R.C. 2151.231 after county support enforcement agency issued an administrative support order under R.C. 3111.84, trial court did not err in its determination of father's child support obligation where R.C. 2151.231 does not restrict the matters that may be considered in an action for payment of child support, so the court did not exceed its authority by considering matters beyond specific objections mother articulated in complaint.

Property division. Liu v. Tallarico-Liu | 2022-Ohio-1088 | 5th Appellate District | 3/31/22 In divorce action in which husband contested division of property, trial court did not err in finding that house was wife's separate property since wife provided evidence that she used proceeds from sale of her pre-marital property to pay down mortgage on house and she established that she paid for significant improvements to property from pre-marital funds, while husband failed to show that he had interest in house, and wife was ordered to pay husband for his share of marital funds used to pay mortgage, R.C. 3105.171.

Child support/Interest/Issuing state. A.B. v. R.B. | 2022-Ohio-1105 | 6th Appellate District | 3/31/22 In action in which the parties divorced in another state, wife registered child support order in Ohio pursuant to the Uniform Interstate Family Support Act (UIFSA), and she sought to recover interest on husband's support arrearage, trial court did not err in declining to adopt magistrate's decision which did not include an award of interest on the arrearage since the wife was entitled to interest under the other state's law and eliminating the interest provision would constitute a modification of the order, which the Ohio court lacked jurisdiction to modify; the former UIFSA statute, R.C. 3115.41, like the current statute, R.C. 3115.604, expressly requires application of the issuing state's law when determining the amount of interest due on arrearages.

Custody/Child support/Sua sponte order. Dyer v. Gomez | 2022-Ohio-1127 | 7th Appellate District | 3/31/22 In divorce action in which father sought modification of parental rights, trial court erred in failing to address father's obligation to pay child support when it granted his motion for custody of child where father was designated residential parent and legal custodian under R.C. 3109.04, mother was provided parenting time under R.C. 3109.051, and although father did not file a motion to terminate child support or seek termination through administrative process pursuant to R.C. 3119.88(A)(9), the court should have sua sponte terminated prior order for child support.

Dissolution/Duress. In re J.M. v. A.M. | 2022-Ohio-1092 | 10th Appellate District | 3/31/22 In dissolution action in which the parties testified at hearing that they voluntarily entered into separation agreement and agreed to its terms, that they were satisfied with the terms, and that each party voluntarily sought dissolution of their marriage,

trial court erred in granting wife's Civ.R. 60(B) motion for relief from judgment on reasoning that wife entered into the agreement under duress due to the multiple stressors in her life where duress does not occur if the stress and pressure of wife's life drove her to sign the separation agreement since duress must result from the opposing party's physical compulsion or improper threats.

Adoption. In re Adoption of R.R.L. | 2022-Ohio-1100 | 11th Appellate District | 3/31/22 Dismissal of petition for adoption of child is affirmed in light of evidence that father provided support to child during the year preceding the filing of the petition, the burden is on the petitioner to demonstrate by clear and convincing evidence that the parent failed to support the child, and there was evidence of father's payment of obligations relating to child and commitment to his support; even though father missed some monthly payments during the one-year period before the petition was filed, the total support obligation amount was satisfied, which is consistent with the purpose of the statute relating to consent, R.C. 3107.07(A).

Divorce decree/Jurisdiction. Rodeno v. Mezenski | 2022-Ohio-1176 | 8th Appellate District | 4/7/22 In divorce action in which incompetent wife's guardian sought to vacate final judgment entry of divorce, trial court did not err in denying the motion since the decree did not contain a reservation of jurisdiction to modify award of spousal support or property pursuant to R.C. 3105.18(E) or R.C. 3105.171(I), and following death of husband, the court retained jurisdiction only to enforce rights already fixed by the divorce decree but not to order or impose new rights and obligations, Civ.R. 60(B)(5).

Jurisdiction/Breach of separation agreement. State ex rel. Heyside v. Calabrese | 2022-Ohio-1245 | 8th Appellate District | 4/8/22 Relator's petition for writ of prohibition is denied where he sought to preclude respondent-common pleas judge from hearing his former wife's breach of contract claim involving the parties' separation agreement in divorce action since his argument that only the domestic relations court has jurisdiction is without merit; respondent's court has jurisdiction over the breach of contract claim under R.C. 2305.01, R.C. 3105.10 does not apply to unequivocally remove jurisdiction to domestic relations court, and even though separation agreement is no longer enforceable as a contract, non-existence of a contract is a defense to an action but does not affect subject-matter jurisdiction.

Spousal support/Allocation of home. Sharp v. Sharp | 2022-Ohio-1201 | 9th Appellate District | 4/11/22 In remanded divorce action, trial court did not err in denying husband's motion for modification of spousal support where his argument was meritless that the court's change, on remand, of its designation of the parties' home as his separate property to the parties' marital property entitled him to modification of spousal support; there is no indication that the trial court initially, or on remand, considered the designation of the residence as either separate or marital property when determining the issue of spousal support.

Custody/School change. Dennis v. Dennis | 2022-Ohio-1216 | 1st Appellate District | 4/13/22 In divorce action in which mother requested relocation to another state and change of child's school placement, trial court did not err in granting mother's motion where new school has better ranking, driving time to new school was not significantly longer than to current school, mother is willing to pick up daughter from school every day and to meet in a more convenient location, and mother should not be penalized for her multiple moves, while father remained in marital home and had employment flexibility to facilitate extra transportation time.

Civil protection order. McCloud v. Baker | 2022-Ohio-1307 | 4th Appellate District | 4/15/22 In petitioners' action seeking a civil stalking protection order against respondent-neighbor for threatening actions and verbal threats, trial court did not err in granting order where evidence showed that respondent demonstrated a pattern of conduct by riding near driveway with shotgun, staring at petitioners' home, making threats, and blocking shared driveway, and petitioners were concerned about their safety and installed cameras due to respondent's actions, showing mental distress, as defined by R.C. 2903.211(D)(2).

Property division. Kiernan v. Ward | 2022-Ohio-1303 | 9th Appellate District | 4/20/22 In divorce action in which husband disputed division of property, trial court did not err in its valuation of recreational equipment and landscaping business where there was evidence that husband engaged in financial misconduct in selling equipment at auction in violation of court's restraining order, wife's testimony was credible while husband's was evasive and unbelievable, neither party secured an appraisal for the business or included its value in affidavits of property, and wife's experience as business bookkeeper made her valuation more credible.

New trial motion/Appeal. Doss v. Doss | 2022-Ohio-1339 | 2nd Appellate District | 4/22/22 In divorce action in which husband challenged provisions of divorce decree, trial court erred in denying husband's motion for a new trial where his motion raised manifest weight arguments about parenting time and other matters in decree, and Civ.R. 59(A) specifically allows such challenges in motions for a new trial, successor judge failed to review trial transcripts or consider husband's motion on erroneous reasoning that husband's challenges could be raised on appeal instead of a new trial motion, and judge's failure to consider the issues was not harmless error.

Custody/Magistrate's decision. Rushin v. Franks | 2022-Ohio-1410 | 5th Appellate District | 4/27/22 In father's action for parentage and allocation of parental rights, trial court did not err in designating father as residential parent and sole legal custodian of child where magistrate appropriately assigned weight to the evidence and to the R.C. 3109.04 factors, mother did not dispute authenticity of screenshots of texts messages between the parties, and trial court did not base its independent review on anything magistrate relied on regarding a purported hearing, for which there is no record, and that was later stricken from magistrate's decision.

Spousal support. Vernell v. Vernell | 2022-Ohio-1510 | 4th Appellate District | 5/2/22 In divorce action in which husband disputed modification of his spousal support obligation, trial court erred in failing to explain why it did not consider all the evidence presented where there was no explanation for numerical findings, for a deduction from

husband's checking account balance, and for failure to allocate all expenses to each party, R.C. 3105.18(C)(1).

Fraudulent transfer/Limitations. Allan v. Allan | 2022-Ohio-1488 | 8th Appellate District | 5/5/22 In wife's action asserting that husband violated the Fraudulent Transfer Act by transferring business to brother to avoid an equitable division of property in underlying divorce action, trial court's order granting husband's motion for summary judgment on reasoning that wife's claim was not filed within the statute of limitations was error since issues of fact remained as to whether the transfer of business took place and, if so, when the transfer took place, R.C. 1336.09.

Separation agreement/Modification. Shteyngarts v. Shteyngarts | 2022-Ohio-1492 | 8th Appellate District | 5/5/22 In divorce action in which wife sought relief from earlier judgment of legal separation that incorporated parties' separation agreement after husband refused to revise the agreement, trial court did not err in denying wife's motion since modification of agreement in the judgment is not permitted absent consent of both parties under R.C. 3105.171(I), and wife did not file her motion for relief from judgment within reasonable time pursuant to Civ.R. 60(B).

Health Care

Billing/Patient's rights. Barcy v. St. Vincent Charity Med. Ctr. | 2022-Ohio-1064 | 8th Appellate District | 3/31/22 In action by patient, who received medical services to recover from slip and fall injury, to declare unenforceable a letter of protection and waiver form in which he gave up certain rights regarding personal injury action proceeds and/or insurance reimbursement, trial court did not err in partially granting patient's motion for summary judgment since there is no language in the letter or the waiver form to suggest that providers complied with the express requirement of Ohio Adm. Code 5160-1-13.1(C)(3) where the documents contain no language indicating that patient was advised that his medical services were covered Medicaid services and that other Medicaid providers could render his medical services at no cost to patient, and there was no evidence that patient was so advised orally.

Insurance

Motor vehicle/Business use. Great Am. Assurance Co. v. Acuity | 2022-Ohio-501 | 12th Appellate District | 2/22/22 After traffic accident involving contactor-truck owner, in action filed by plaintiff-truck owner's insurer against defendant-insurer of company that hired truck owner for various deliveries, seeking a declaratory judgment that plaintiff's policy for personal insurance for driver did not provide coverage for injury from accident that occurred while owner was driving home, summary judgment for plaintiff was not error since owner remained in the business of trucking company at time of accident, even though he took short personal detours before accident occurred, and plaintiff's policy unambiguously excluded coverage for business use.

Homeowner's. Santiago v. Costanzo | 2022-Ohio-611 | 8th Appellate District | 3/3/22 In negligence action filed by visitor who was injured by insured's dog at insured's house, prompting insured to file a third-party complaint against insurer for a declaratory judgment that homeowner's insurance policy covered visitor's bodily injury, trial court did not err in granting summary judgment to insurer since insured's dog previously attacked insured and the policy excluded coverage for bodily injury caused by insured's dog after the dog had previously caused bodily injury to another person.

Motor vehicle. Maher v. United Ohio Ins. Co. | 2022-Ohio-1015 | 4th Appellate District | 3/21/22 In insured's breach of contract action against insurer for denial of coverage for medical expenses for injuries sustained when insured was a passenger in rail buggy/ATV accident, summary judgment in favor of insurer was not error since buggy was not a covered auto under insured's commercial auto policy, the policy endorsement describes situations in which coverage applies but does not expand coverage to all autos, and there was only one reasonable interpretation of policy.

Personal jurisdiction/Minimum contacts. Cincinnati Ins. Co. v. LOMC, L.L.C. | 2022-Ohio-930 | 7th Appellate District | 3/21/22 In insurer's action seeking a determination regarding coverage obligations to nonresident limited liability company (LLC) where LLC contracted with contractor to work on reclamation project and to be added as a named insured on contractor's insurance policy, resulting in state's environmental management department sending LLC a notice of violation and of the imposition of fines for environmental damage, trial court did not err in granting LLC's motion to dismiss for lack of personal jurisdiction where LLC's contacts with Ohio were two letters sent to contractor, which did not establish minimum contacts, and a court in other state was a more convenient forum, R.C. 2307.382.

Commercial general liability/umbrella. Motorists Mut. Ins. Co. v. Ironics, Inc. | 2022-Ohio-841 | Supreme Court of Ohio | 3/23/22 In action to declare that insureds were not entitled to coverage under commercial general liability and umbrella policies when insured inadvertently supplied defective, nonconforming products to customer, court of appeals' judgment that trial court erred in granting summary judgment to insured regarding umbrella coverage is affirmed since customer's claims arose out of an accident that resulted in "property damage" under insured's umbrella policy with insurer, and none of the policy's exclusions applies.

Farmowner's/Motor vehicle exclusion. Grange Ins. Co. v. Riggs | 2022-Ohio-955 | 5th Appellate District | 3/24/22 In insurer's action seeking a declaration that coverage did not exist under farmowner's policy for motor vehicle accident, the subject of litigation in underlying case, caused by insured's daughter who was driving at the time of the accident, summary judgment in favor of insurer was not error since the policy excluded coverage for claims arising out of operation of a motor vehicle, and insured's negligence in distracting her daughter when she was driving is not the basis of a separate cause of action in and of itself.

Motor vehicle/Underinsured/Offset. Kent v. Motorist Mut. Ins. Co. | 2022-Ohio-1136 | 3rd Appellate District | 4/4/22 In insureds' action against insurer seeking coverage under underinsured motorist endorsement on policy for vehicle accident caused by negligence of driver of other vehicle, summary judgment in favor of insurer was not error where, even if the endorsement were available, the amount of coverage

Insurance (Cont.)

under the endorsement would be offset by the amount insured received from negligent driver's insurance.

Duty to defend/Excess clause. Great Am. Ins. Co. of N.Y. v. Philadelphia Indemn. Ins. Co. | 2022-Ohio-1160 | 1st Appellate District | 4/6/22 In plaintiff-primary general-liability insurer's action against defendant-primary employment-practices-liability insurer seeking to recover partial costs of defending common insured party, judgment in favor of plaintiff was error where plaintiff's policy detailed a broad duty to defend while defendant's policy had an excess clause limiting its liability when other insurance was available, and because plaintiff's policy limits were not exhausted, defendant's duty to defend never attached and the equitable doctrine of contribution does not apply.

Juvenile

Delinquency. In re T.D.S. | 2022-Ohio-525 | 8th Appellate District | 2/24/22 Adjudication of juvenile as delinquent for multiple adult felony counts, including adult felony murder arising from a shooting death, the juvenile court's disposition of juvenile to the department of youth services was not error where, although juvenile claimed both experts evaluating his competency found him incompetent, only one did so find, with the other stating the juvenile was presumptively competent based on his evaluation; officers' questioning of juvenile while he sat next to his mother at their home was not coercive.

Visitation. In re S.S. | 2022-Ohio-520 | 8th Appellate District | 2/24/22 Dismissal of father's motion for modification of parenting time with neglected children who were in legal custody of their aunt and uncle was error since the trial court did not hold an evidentiary hearing, there was no explanation or analysis for denial of father's residual parenting rights, and there was insufficient information to adequately assess whether it would be detrimental or harmful to the children to grant father reasonable visitation rights, R.C. 2151.011 and 2151.353; the dismissal was a final appealable order since it affected father's substantial rights as a non-custodial parent.

Custody/Inconvenient forum. In re R.S.H.-F. | 2022-Ohio-549 | 2nd Appellate District | 2/25/22 In parents' custody dispute where father filed a motion to change custody, trial court did not err in denying mother's motion to transfer jurisdiction to another state since the Ohio court possessed home-state jurisdiction to issue original custody decree, and under the factors of R.C. 3127.16, retained exclusive, continuing jurisdiction because of father's continued residence in Ohio; the court considered all the factors in R.C. 3127.21 related to the inconvenient forum determination and concluded that it was most familiar with the parties and the issues and was ready to proceed expeditiously to a final judgment.

Delinquency. In re J.P. | 2022-Ohio-539 | 1st Appellate District | 2/25/22 In an adjudication of juvenile as delinquent of adult murder, the juvenile court's dismissal of the serious youthful offender specification was not error since the state did not request the dispositional sentence in the complaint nor file a timely notice of its intent to do so as required by R.C. 2152.13(A)(4) and Juv.R. 29(A) and (E); also, dismissal of the specification was a final appealable order under R.C. 2505.02(B)(4).

Custody/Right to counsel. In re M.M. | 2022-Ohio-579 | 11th Appellate District | 2/28/22 Award of permanent legal custody of child to father is affirmed where, although mother was not notified of her right to counsel, as required under R.C. 2151.352, the waiver exception applied because mother was aware of her rights since she previously expressly waived her right to appointed counsel.

Delinquency. In re T.D. | 2022-Ohio-562 | 12th Appellate District | 2/28/22 In an adjudication of juvenile as delinquent of adult statutory rape, R.C. 2907.02(A)(1)(b), imposition of 12-month commitment to the division of family services following juvenile's admission to a fourth probation violation was not error since juvenile admitted at the adjudicatory hearing that the offense occurred on a date when he was over 13 years-old, and thus In re D.B. does not apply to render the commitment unconstitutional.

Delinquency. In re A.M. | 2022-Ohio-612 | 8th Appellate District | 3/3/22 In an adjudication of juvenile as delinquent of two counts of gross sexual imposition and one count of sexual imposition, the juvenile court erred by failing to merge for sentencing as allied offenses of similar import the two counts of gross sexual imposition and the count of sexual imposition since the offense arose out of a single incident and constituted allied offenses of similar import; remanded for re-sentencing.

Custody/Contempt/Anticipatory. In re Contempt of J.A.P. | 2022-Ohio-613 | 8th Appellate District | 3/3/22 In custody dispute involving mother's scheduling a spring break vacation with the parties' children, which father contended was in violation of the parties' shared parenting agreement, trial court erred in holding mother in contempt since at the time father filed his motion to show cause, mother's vacation with the children, although scheduled, had yet to occur, and ultimately the vacation was cancelled due to the pandemic; father's motion to show cause merely anticipated a breach of the agreement, which never occurred, and there was no violation of the agreement.

Bindover. State v. Courts | 2022-Ohio-690 | 8th Appellate District | 3/10/22 Following bindover of juvenile and conviction by plea of involuntary manslaughter and receiving stolen property, admission of hearsay at probable cause hearing was not error since the right to confrontation exists as a trial right, and a juvenile probable-cause hearing is not a trial because it does not find as a fact that the accused minor is guilty of the offense charged, Iacona.

Delinquency. In re A.Y. | 2022-Ohio-739 | 1st Appellate District | 3/11/22 Adjudication of juvenile as delinquent of adult aggravated robbery with accompanying firearm specifications, having a weapon while under a disability and robbery, magistrate did not err by mentioning that the juvenile had exercised his right to remain silent during police questioning since the magistrate did not use that silence against him because the magistrate relied on the victim's statement that he recognized the juvenile and identified items that an officer subsequently located at juvenile's home.

Custody/Permanent/Different tests. In re A.D. | 2022-Ohio-736 | 12th Appellate District | 3/14/22 Award of permanent custody of neglected twins to agency was not error because agency filed its motions for permanent custody of the twins after juvenile court had already issued an initial disposition, and the two-part test under R.C. 2151.414(B)(1) was properly applied; however, the motion for permanent custody of third dependent and neglected child was made as part of his dependency complaint and the trial court erred by failing to apply the R.C. 2151.353(A)(4) test to determine if permanent custody was in the best interest of the child.

Delinquency. In re T.S. | 2022-Ohio-975 | 5th Appellate District | 3/14/22 In an adjudication of juvenile as delinquent of adult felonious assault, the juvenile court's finding that appellant did not act in self-defense was not against the weight of evidence where surveillance evidence showed appellant taunting victim and throwing a basketball at him, charging and striking him several times, and breaking the victim's jaw, and there is no defense of mutual combat in Ohio.

Dependent child/Custody/Evidence. In re H.P. | 2022-Ohio-778 | 9th Appellate District | 3/16/22 Adjudication of child as dependent and award of temporary custody to agency is affirmed where mother's admission to social worker that she had relapsed and used drugs just prior to child's birth fell within privilege exception under R.C. 2317.02(G)(1)(a) because past child abuse is considered a clear and present danger, privilege exception does not require proof that drug use harmed child, and although caseworker's testimony concerning general effects of drugs was improperly admitted, the error was harmless, R.C. 2151.04.

Custody/Lack of service. In re X.H. | 2022-Ohio-779 | 9th Appellate District | 3/16/22 Award of permanent custody of children to agency is affirmed, even though service was not perfected on father, since mother's argument that she was prejudiced by lack of service on father was mere speculation and does not demonstrate actual prejudice, neither parent had been a caregiver for an extended period, mother failed to consistently participate in behavioral health therapy, she ignored younger children during visits, and she failed to obtain adequate housing for children, while children do not wish to leave current placements, R.C. 2151.414; the In re Jones court ruled differently on the lack of service issue.

Delinquency. In re J.C. | 2022-Ohio-850 | 1st Appellate District | 3/18/22 In an adjudication of juvenile as delinquent of adult carrying a concealed weapon, R.C. 2923.12(A), the juvenile court did not err by excluding criminal record of juvenile's brother who handed his gun to juvenile to hide during a traffic stop since it was not relevant where convictions were for misdemeanors and the more serious convictions were over 12 years-old and, moreover, there was no evidence that the brother could have immediately harmed appellant if she had refused to conceal his gun.

Delinquency. In re S.W. | 2022-Ohio-854 | 1st Appellate District | 3/18/22 In juvenile delinquency proceeding for adult aggravated robbery, grant of motion to suppress statements made to officer at the time of his arrest was error where, although juvenile was in custody, he was not subject to interrogation when he made an unsolicited, voluntary statement to an officer after he had been given Miranda warnings prior to his unsolicited statement.

Delinquency. In re S.G. | 2022-Ohio-897 | 7th Appellate District | 3/18/22 In adjudication of juvenile as delinquent of adult rape, the trial court erred in finding juvenile was amenable to rehabilitation in the juvenile justice system since the court's setting the matter for a merits hearing two months prior to juvenile's twenty-first birthday provided insufficient time to rehabilitate him in the juvenile justice system in view of the seriousness of the charge, R.C. 2152.12(B) and Watson; remanded to the juvenile court to transfer case to the general division court.

Bindover. State v. Hollie | 2022-Ohio-872 | 12th Appellate District | 3/21/22 In a conviction of juvenile of aggravated robbery following voluntary bindover that the general division court transferred back to the juvenile court for an amenability hearing after determining that appellant was eligible for reverse bindover proceedings, the juvenile court erred by refusing jurisdiction and transferring the case back to the general division court without conducting an amenability hearing where the state did not secure a conviction for aggravated robbery involving a "firearm" as specified in R.C. 2152.10(A)(2)(b).

Custody/Termination. In re J.B. | 2022-Ohio-946 | 8th Appellate District | 3/24/22 Order to continue prior award to agency of planned permanent living arrangement for neglected child was not error, even after child was adjudicated delinquent and was committed to the custody of department of youth services, since agency failed to show that its notice of termination, rather than a motion to terminate custody, was an appropriate method to bring the issue before the court.

Relief from judgment. J.N. v. L.A. | 2022-Ohio-974 | 5th Appellate District | 3/24/22 In father's action to determine parentage and to establish parenting time where parties reached an agreement and the trial court dismissed the action without prejudice, the court erred in granting father's Civ.R. 60(B)(5) motion for relief from judgment since father failed to file parties' agreed judgment entry pursuant to Loc.R. 11(B), he did not file a motion for contempt when mother failed to respond to emails of the agreed entry, he did not appeal dismissal, and the case is not extraordinary or unusual because he can refile action for parentage, Civ.R. 60(B)(5).

Custody/Child support. In re J.D. | 2022-Ohio-996 | 12th Appellate District | 3/28/22 Denial of father's motion to terminate child support arrearage where father argued that mother's death relieved him of his arrearage of child support, was not error since a court or child support enforcement agency may not retroactively modify an obligor's duty to pay a delinquent support payment, except in limited circumstances, and termination of an arrearage is a retroactive modification of child support; also, trial court did not err in denying father's motion to modify custody since the court implicitly found that a change of custody was not in the children's best interest.

Delinquency. In re D.H. | 2022-Ohio-986 | 3rd Appellate District | 3/28/22 In an adjudication of juvenile as delinquent of adult gross sexual imposition and subsequent completion of department of youth services custody, and classification of juvenile as a tier III Juvenile Offender Registrant is affirmed since appellant's claim that

the classification constituted cruel and unusual punishment was not raised in the trial court and appellant made no plain error argument on appeal, and thus any error is waived.

Custody/Best interest. In re D.V. | 2022-Ohio-1024 | 1st Appellate District | 3/30/22 Award of permanent custody of dependent children to agency was error where wishes of older child were not expressed to the court and R.C. 2151.414(D)(1)(b) requires consideration of child's wishes when determining best interest, nothing in record supports the argument that child was too young to express his wishes, neither guardian ad litem's recommendation or mother's testimony regarding the child's wishes is sufficient to fulfill the statutory requirements, and because children's best interests are intertwined, termination of mother's parental rights is reversed as to both children.

Custody/Evidence/Invited error. In re A.V. | 2022-Ohio-1061 | 8th Appellate District | 3/31/22 Award of legal custody of child to father is affirmed where the trial court did not err in denying mother's request to testify since the court asked mother's counsel if she had any witnesses and mother's counsel responded that she did not; also, the court's inappropriately broad interpretation of mother's Fifth Amendment protection, effectively precluding father from calling mother as a witness after mother's counsel informed the court that mother would not waive her right to remain silent, was invited error.

Delinquency. In re J.G. | 2022-Ohio-1137 | 3rd Appellate District | 4/4/22 Following adjudication of delinquency by admission of adult sexual offenses, the trial court did not err by retaining jurisdiction over juvenile after finding that he had successfully completed probation since completion of probation did not trigger the loss of the juvenile court's jurisdiction because the court specifically kept other sanctions in effect, In re J.F.

Delinquency. State v. Jones | 2022-Ohio-1169 | 8th Appellate District | 4/7/22 In three juvenile court actions involving allegations of adult felony and misdemeanor offenses, the juvenile court's decision to bindover two cases and classify appellant as an adult in those cases while retaining jurisdiction over third case and finding juvenile in the third case as delinquent was constitutional since rationally related to the legitimate government purpose authorized by statute; also, at the time appellant entered an admission in the juvenile case, he had not pled or been convicted in the transferred cases, and thus he met the statutory definition of a child, and the juvenile court properly retained jurisdiction over that case.

Custody/Children's wishes. In re E.H. | 2022-Ohio-1190 | 12th Appellate District | 4/8/22 In mother's appeal of award of permanent custody of children to agency, the award of permanent custody of children to agency is reversed since there is no evidence regarding children's wishes or information as to their maturity or capability to express wishes, even though the court considered enumerated factors of R.C. 2151.414(D) in determining best interests of children; also, the trial court considered reports of court-appointed special advocate, but those reports were not available for review on appeal.

Custody. In re E.C. | 2022-Ohio-1223 | 9th Appellate District | 4/13/22 Award of legal custody of dependent children to father was not error where previously children spent significant amount of time in father's care even though there was a shared parenting plan, children expressed a desire to live with father and to visit with mother, children's needs are met in father's home, and father wants children to maintain relationship with mother and facilitated more visitation than required by plan, while there was evidence that mother struggles with drug abuse and that her untreated mental health issues put children at risk, R.C. 2151.353.

Custody/Child support/Relief from judgment. In re Z.L. | 2022-Ohio-1234 | 8th Appellate District | 4/14/22 In custody action in which father disputed calculation of his child support obligation and trial court overruled father's objections to magistrate's decision, the court erred in denying father's Civ.R. 60(B) motion for relief from judgment since information regarding mother's income is considered newly discovered evidence because she failed to disclose her military income, and father was unable to obtain necessary information because mother refused to provide responses to discovery requests.

Delinquency. In re B.C. | 2022-Ohio-1298 | 4th Appellate District | 4/15/22 In adjudication of juvenile as delinquent of adult rape, R.C. 2907.02(A)(1)(b), the juvenile court did not commit plain error by issuing a dispositional order that imposed both a department of youth services commitment and a term of court-supervised probation as a community control condition since R.C. 2152.19(A)(4)(a) grants juvenile courts authority to impose probation as a term of community control "in addition to any other disposition authorized or required by" R.C. Ch. 2152.

Custody/Contempt/Purge condition. In re C.L.W. | 2022-Ohio-1273 | 12th Appellate District | 4/18/22 In father's motion requesting parenting time during child's school break, trial court did not err in finding mother in contempt for interfering with father's parenting time where there was evidence that mother willfully violated court order by not facilitating child's transfer to father's care, and her testimony was controverted by child's statements during in camera interview; however, purge condition was void because it required mother to comply with shared parenting plan in future.

Custody/Children's wishes. In re E.H. | 2022-Ohio-1275 | 12th Appellate District | 4/18/22 Award of permanent custody of children to agency was error where, although the court considered enumerated factors of R.C. 2151.414(D) in determining best interests of children, there is no evidence regarding children's wishes or information as to their maturity or capability to express wishes, and although the court considered reports of court-appointed special advocate, those reports were not available for review on appeal.

Delinquency. In re C.B. | 2022-Ohio-1299 | 5th Appellate District | 4/19/22 Following a 2015 adjudication of juvenile as delinquent of, inter alia, two counts of adult rape and classification as a Tier II sex offender, his discharge from department of youth services on attainment of 21 years of age and discharge from parole, denial of request for reclassification of sex offender status was not error where, although appellant had been an exemplary resident at

the facilities in which he was placed, he had committed sexually-oriented offenses against a child with a large discrepancy in age, he had not shown remorse, declined to participate in any sex offender treatment and presented a continued risk to the public.

Custody. In re K.P. | 2022-Ohio-1347 | 12th Appellate District | 4/22/22 Award of permanent custody of dependent and abused child to agency was not error where mother failed to show that pandemic restrictions prevented her from having the opportunity to work on her case plan, she made significant progress on case plan but lacked housing, transportation and employment, and evidence shows that she has ongoing substance abuse issues, while child no longer qualifies for temporary custody under R.C. 2151.415(D), is doing well, and is bonded with foster family, R.C. 2151.414.

Delinquency. In re D.A. | 2022-Ohio-1359 | 3rd Appellate District | 4/25/22 In adjudication of juvenile as delinquent of adult gross sexual imposition, R.C. 2907.05(A)(5), classification of juvenile as a juvenile sex offender registrant/ Tier I sex offender was not error where, contrary to appellant's claim that the juvenile court judge treated the sex offender registration as mandatory, the judge stated that it was discretionary and subject to review in the future, and even if a trial court can hold a hearing at the conclusion of probation, it has discretion to determine the matter on the day the delinquency hearing is held, R.C. 2152.83(B).

Child support. G.P. v. L.P. | 2022-Ohio-1373 | 5th Appellate District | 4/25/22 In extensive litigation over custody matters in which father sought modification of his child support obligation, trial court did not err in imputing father's income where father was voluntarily unemployed or underemployed, he had access to cash from sale of business or profit from sale of home, he was not denied an opportunity to be heard, and because it would be prejudicial to mother to reward father for not working leading up to child support hearing, his previously determined income was left unchanged, R.C. 3119.01.

Bindover. State v. Harden | 2022-Ohio-1436 | 4th Appellate District | 4/27/22 Following R.C. 2152.12 mandatory bindover of juvenile for adult attempted aggravated murder, R.C. 2923.02(A)/2903.01(A), appellant pled to felonious assault, R.C. 2903.11(A)(1), and the trial court remanded matter to the juvenile court since the felonious assault offense would have subjected appellant to a discretionary transfer, and juvenile court's determination that appellant was not amenable to treatment within the juvenile system based on his age at the probable cause hearing rather than his age at the amenability hearing was not error since age is only one factor of the 17 factors listed in R.C. 2152.12(D) and (E).

Delinquency. In re D.W. | 2022-Ohio-1407 | 8th Appellate District | 4/28/22 Adjudication of juvenile as delinquent of adult gross sexual imposition, R.C. 2907.05(A)(4), met the sufficiency and weight of evidence standards by minor victim's testimony of juvenile's contact with her on her "private part" by the state using a teddy bear for victim to show where contact occurred, and the victim's advocate's statements during victim's testimony was not to tell victim what to say, but to comfort her and to inform the court what victim said during her testimony.

Custody/Child support. In re B.A.K. | 2022-Ohio-1443 | 12th Appellate District | 5/2/22 In custody action in which mother disputed amount of father's child support obligation, trial court erred in its calculation of father's income where, although sound methodology was used to produce reasonably accurate gross income for father, father was found to be underemployed and the potential income to impute to father was not used in calculating his support obligation, R.C. 3119.01.

Delinquency. State v. Hudson | 2022-Ohio-1435 | Supreme Court of Ohio | 5/4/22 Conviction in general division of common pleas court of felonies alleged to have been committed when appellant was a juvenile was error since juvenile division had exclusive subject matter jurisdiction where appellant was arrested and indicted when he was 20 years-old for felonious acts that he allegedly committed as a juvenile, and the juvenile court continued to have jurisdiction notwithstanding that the original indictment was dismissed and appellant was reindicted for the same acts when he was 22 years-old, R.C. 2152.02(C)(3) and 2151.23(I).

Custody/Procedure. In re H.S. | 2022-Ohio-1478 | 9th Appellate District | 5/4/22 Award of permanent custody of children to agency is affirmed where mother's argument that trial court's procedural error required the court to dismiss the case or terminate temporary custody is without merit; the prolonged period of temporary custody in the instant case was due to a prior appeal by parents, resulting in temporary custody continuing by operation of law rather than by court order extending an existing order, R.C. 2151.353(G) and 2151.415(D)(4), and mother failed to explain why her argument is not precluded by the law-of-the-case doctrine after the same issue was explicitly addressed in prior appeal.

Custody. In re T.G. | 2022-Ohio-1521 | 2nd Appellate District | 5/6/22 Award of legal custody of child to relative caregivers was error since there was no evidence that mother had abandoned or contractually relinquished child, the point of determination for mother's unsuitability should have been at the time of hearing and not at the time of child's birth, mother's sobriety and suitability were independently established by credible witnesses, she actively participated in group treatment and individual therapy and was doing extremely well, and she completed her case plan, even though she wasn't legally obligated to do so.

Labor and Employment

Public employee/Retirement benefits. State ex rel. Worthington v. Ohio Pub. Emps. Ret. Sys. | 2022-Ohio-535 | 10th Appellate District | 2/24/22 Petition for writ of mandamus to compel the state retirement system to rescind a retroactive revocation of claimant's health insurance coverage for a specific period and to reinstate her health insurance for that same period is denied since claimant forfeited her retirement benefits for the period in question where she worked as an independent contractor for the public employer from which she retired, and the 60-day interval for resumption of work as an independent contractor only shields retirement benefits when employee resumes contract work for a public employer from which the employee did not retire, R.C. 145.38(B)(6).

Discrimination/Disability. Cole v. Fifth Third Bancorp | 2022-Ohio-774 | 5th Appellate District | 3/15/22 In employee's disability discrimination action against employer for terminating his employment prior to end of his paternity leave where employee had submitted his resignation to take effect at the conclusion of his leave, summary judgment in favor of employer was not error where, although there may have been an adverse employment action depriving employee of expected wages, employee failed to present evidence demonstrating a nexus between his termination and his disability, and evidence showed that employer had an honest belief that employee falsified call logs, demonstrating that the reason for termination was not pretextual.

Public employment/Reprimand. Cleveland Fire Fighters Assn., Local 93 v. Cleveland | 2022-Ohio-824 | 8th Appellate District | 3/17/22 In firefighters union's appeal seeking to vacate arbitrator's award upholding official reprimand of assistant chief for not following the chain of command, the trial court erred in vacating the award since the charge of conduct unbecoming with punishment of official reprimand was appropriate, and arbitrator's award was consistent with collective bargaining agreement, R.C. 2711.10(D).

Discrimination. Jones v. Unican Ohio, L.L.C. | 2022-Ohio-948 | 8th Appellate District | 3/24/22 In employee's action against former employer alleging, inter alia, age discrimination for forcing his retirement, trial court did not err in granting employer's motion for directed verdict where employee presented only indirect evidence of discrimination, employer was aware of employee's advanced age at time of hiring him several years earlier, and there was no evidence that a reduction-in-force occurred or that employee was replaced by a substantially younger employee.

Whistleblower/Bankruptcy/Judicial estoppel. Cook v. Pitter Patter Learning Ctr., L.L.C. | 2022-Ohio-961 | 2nd Appellate District | 3/25/22 In employee's action against former employer alleging retaliatory termination under the R.C. 5113.52 whistleblower statute, trial court's dismissal on the basis of judicial estoppel, reasoning that employee tried to conceal her potentially successful claim from the bankruptcy court in her subsequent bankruptcy filing, was error since she should be allowed to establish that she did not act in bad faith, as evidenced by her disclosure to counsel and lack of opportunity to review the bankruptcy documents; also, there is an issue of the status of the bankruptcy trustee as the real party in interest in the whistleblower case.

Discrimination/Workers' compensation. Jones v. Natural Essentials | 2022-Ohio-1010 | 11th Appellate District | 3/28/22 In terminated employees' workers' compensation discrimination, R.C. 4123.90, and related claims action against employer for termination after one employee was injured while at work, summary judgment in favor of employer was not error since employer was not on notice that employee had suffered a debilitating injury as result of a fall, and even if employer was not truthful about when and why termination decision was made, there was no evidence that the termination decision was made in anticipation of a future workers' compensation claim.

Discrimination/Disability. Anderson v. Bright Horizons Children's Ctrs., L.L.C. | 2022-Ohio-1031 | 10th Appellate District | 3/29/22 In employee's disability discrimination action against former employer for forced resignation, summary judgment in favor of employer was error where, although employee was not disabled under language of R.C. 4112.01, questions remain as to whether employer regarded employee as having physical impairment pursuant to R.C. 4112.01(A)(16) and whether her resignation was voluntary, and employer did not challenge employee's ability to safely and substantially perform essential functions of job.

Unemployment compensation. Mason v. Dir., Ohio Dept. of Job & Family Servs. | 2022-Ohio-1067 | 8th Appellate District | 3/31/22 In employee's appeal of denial of unemployment benefits after she was terminated from her job with newspaper for leaving delivery area in company vehicle without authorization, trial court erred in affirming administrative denial since the issue in determining if an employee is terminated for just cause is whether the employee by her actions demonstrated an unreasonable disregard for her employer's best interest, evidence showed that employee did not know about the policy for which she was fired, and administrative decision finding that employee admitted knowing about the policy was against the weight of evidence.

Age/Race discrimination. Drummond v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-1096 | 10th Appellate District | 3/31/22 In plaintiff's action alleging age and race discrimination by defendant-state department after another employee, who was outside the protected class, was promoted to the position that plaintiff had applied for, trial court did not err in granting summary judgment to defendant since the interviewing panel unanimously recommended offering the position to the other employee, which was a legitimate, nondiscriminatory reason for hiring the other employee rather than a pretext for race or age discrimination; defendant's reason for hiring the other employee rebutted plaintiff's prima facie case.

Unemployment compensation. Harmon v. ODJFS | 2022-Ohio-1142 | 12th Appellate District | 4/4/22 In employee's application for unemployment compensation benefits after she was terminated when her maximum disability leave duration ended under employer's policy, trial court erred in affirming commission's decision denying benefits where, although employee performed no work during base period, her disability payments constituted remuneration under R.C. 4141.01, she was an active status employee while on employer-approved disability leave, and her disability remuneration was in consideration for services previously provided before becoming disabled.

Termination/Due process. Schaffer v. Covington Exempted Village School Dist. Bd. of Edn. | 2022-Ohio-1189 | 2nd Appellate District | 4/8/22 In school employee's administrative appeal of school board's termination of his contract on evidence that he lied to sheriff after euthanizing and disposing of quarantined dog, trial court erred in holding that the board deprived employee of due process since the notice to employee of his pre-termination hearing made it clear that evidence of employee's potentially criminal actions and attempted cover-up was the basis for considering termination of his employment, so there was no violation of due process, even

though the notice did not specifically include charges of dishonesty and immoral conduct, R.C. 3319.081(C).

Unemployment compensation. Brown v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-1218 | 10th Appellate District | 4/12/22 In school assistant's appeal of denial of unemployment compensation benefits claim following termination of her employment, trial court did not err in affirming commission's decision where commission's finding of just cause for termination was supported by evidence that assistant reported a student's abuse allegation to parent without following school protocol, failed to notify appropriate administrator or have administrator present when discussing alleged abuse with parent, and made a video recording without proper consent, R.C. 4141.282.

Discrimination/Age. Fonce v. Champion Twp. | 2022-Ohio-1278 | 11th Appellate District | 4/18/22 In zoning inspector's age discrimination action alleging that she did not receive benefits that township had promised her, summary judgment in favor of township was not error where inspector failed to demonstrate direct evidence of age discrimination by establishing a nexus between township asking when she would retire and any of her claimed adverse employment actions, she did not show that similarly situated non-protected individuals were treated more favorably than she was, and she failed to show that changes in employment conditions were adverse.

Prohibited inquiry/Retaliation. Hall v. Crawford Cty. Job & Family Servs. | 2022-Ohio-1358 | 3rd Appellate District | 4/25/22 In employee's prohibited-inquiry and retaliation action against employer for improperly inquiring about her medical condition prior to her termination, summary judgment in favor of employer was not error since employee failed to show improper inquiry where she had informed employer about her disability prior to time of the inquiry, and her request for reasonable accommodation for disability was not a protected activity to show retaliation under R.C. 4112.02(I) because her request was not made in opposition to an unlawful discriminatory practice or as participation in an investigation under R.C.4112.01 to 4112.07.

Procedure

Appeal/Certificate of judgment. Doe v. Boland | 2022-Ohio-503 | 9th Appellate District | 2/22/22 In plaintiffs' motion for order of garnishment of defendant's personal earnings after filing certificate of judgment from federal court, defendant's appeal of denial of motion to strike certificate is dismissed for lack of jurisdiction since the lien in favor of plaintiff was created on filing of certificate of judgment, R.C. 2329.02, but no proceedings have been undertaken to enforce the lien, and therefore the order has not affected a substantial right and is not a final, appealable order under R.C. 2505.02.

Reconsideration/Panel of judges. Jezerinac v. Dioun | 2022-Ohio-509 | Supreme Court of Ohio | 2/24/22 In appeal in which one party filed an application for reconsideration of the court of appeals' judgment, it was not error for one of the panel's judges, who originally heard the appeal and subsequently retired, to be replaced by an appointed judge for purposes of deciding the application for reconsideration; the panel with the replacement judge remains "the panel that issued the original decision" within the meaning of App.R. 26(A)(1)(c).

Class action/Certification. Midland Funding, L.L.C. v. Colvin | 2022-Ohio-572 | 3rd Appellate District | 2/28/22 In plaintiffs-debt collectors' action against defendant-credit cardholder where defendant counterclaimed that plaintiffs filed collection actions against cardholders in counties in which they do not live, trial court did not err in granting defendant's motion for class certification since the issue of predominance was satisfied because all class members were sued in incorrect jurisdictions, and plaintiffs' various defenses against class members do not prevent certification because factual and legal issues remain essentially the same, Civ.R. 23(B)(3).

Relief from judgment. Bancsi v. Valmark | 2022-Ohio-782 | 9th Appellate District | 3/16/22 In employee's action against employer alleging employment-related claims where employer also filed an action against employee, the trial court erred in granting employee's motion to vacate the court's order compelling arbitration where employee did not explicitly assert that she was entitled to relief under Civ.R. 60(B), and her arguments could have been raised on direct appeal and were not proper grounds for relief under Civ.R. 60(B)(4).

Appeal/Final appealable order. Davis v. Nathaniel | 2022-Ohio-751 | Supreme Court of Ohio | 3/16/22 Court of appeals' judgment is vacated and the case is remanded to the trial court because there was no final appealable order, R.C. 2505.02(B).

Pleading/Limitations. Harris v. Cunix | 2022-Ohio-839 | 10th Appellate District | 3/17/22 In plaintiff-casino dealer's action against defendant-player for conduct aiding and abetting sex discrimination, the trial court erred in denying plaintiff's motion to amend complaint to add a civil claim for damages arising from defendant's various alleged criminal acts where the nature of R.C. 2307.60(A)(1) is remedial because its primary purpose is to compensate victims rather than to punish offenders, and therefore amended claim is subject to the longer statute of limitations in R.C. 2305.07(B) rather than the shorter period in R.C. 2305.11(A).

Jurisdiction/Service/Hearing. Progressive Direct Ins. Co. v. Williams | 2022-Ohio-887 | 3rd Appellate District | 3/21/22 In plaintiff-vehicle owner's negligence action for damages related to vehicle collision allegedly caused by defendant-driver, trial court erred in denying defendant's motion to vacate default judgment where in-person service of process was waived due to pandemic accommodations, but language of Civ.R. 4.1 coupled with defendant's sworn statement that he was never served with complaint, warranted a hearing to determine personal jurisdiction.

Frivolous conduct. Adams v. Morningstar | 2022-Ohio-918 | 4th Appellate District | 3/22/22 In plaintiff-attorney's breach of contract and promissory estoppel action against defendant claiming that defendant failed to pay plaintiff a referral fee, which defendant agreed to pay plaintiff on the mistaken belief that her attorney had agreed to pay a referral fee to plaintiff, the trial court did not err in imposing sanctions against plaintiff for frivolous conduct where there was no evidence of consideration for an alleged promise to pay a referral fee, plaintiff admitted

that he provided nothing to defendant, and although plaintiff may have relied on an alleged promise of a referral fee, he should have known that he was not entitled to such a fee under Prof.Cond.R. 1.5(e) and R.C. 2323.51(A)(2).

Discovery/Magistrate. Li v. Du | 2022-Ohio-917 | 9th Appellate District | 3/23/22 In tort action in which one of the plaintiffs recorded a deposition with her cell phone but inadvertently left it at defendants' attorney's office, it was not error for the magistrate to order submission of the cellphone for forensic testing under a separately filed protective order since magistrates have the authority to enter orders without judicial approval for regulating the proceedings if the orders are not dispositive of a claim or defense of a party, Civ.R. 53(D)(2)(a)(i), and in denying plaintiff's motion to set aside the magistrate's order, trial court weighed the privacy and confidentiality concerns and adopted a protocol with substantial precautions to safeguard confidential and/or privileged information.

Judgment on the pleadings. M.C. v. Choudhry | 2022-Ohio-915 | 9th Appellate District | 3/23/22 In divorce action in which husband sought a declaratory judgment that parties' settlement agreement was binding and that wife had violated the agreement, the trial court erred in sua sponte granting judgment on the pleadings in favor of wife since the court considered matters beyond the pleadings in relying on a judgment previously rendered in a related eviction case that was not attached or incorporated into the pleadings, and there was no mention of the substance of the judgment in the pleadings.

Pleading/Legal name. Gingrich v. G & G Feed & Supply, L.L.C. | 2022-Ohio-982 | 5th Appellate District | 3/25/22 In plaintiff's intentional tort action against defendants-employer and equestrian center for injuries sustained when employer allegedly intentionally struck her with a metal clipboard, trial court erred in denying plaintiff's motion to correct the record to reflect the legal name of the equestrian center since the center allowed the action to proceed with its trade name as named defendant to protect the sui juris entity, even though it knew its rights could be affected by the action, and plaintiff was not required to take any further action to determine the legal entity before commencing action against trade name, Civ. R. 15(A), R.C. 1329.10 and Ginn.

Jurisdictional amount/Transfer. Scott v. Scott | 2022-Ohio-1052 | 7th Appellate District | 3/25/22 In parents' forcible entry and detainer action filed in municipal court against son, claiming failure to make rent payments, where son filed a counterclaim and motion to transfer case to common pleas court on the date of the hearing and municipal court ordered son to vacate the property before granting son's motion to transfer the case on the basis that his counterclaim exceeded municipal court's jurisdiction, common pleas court's judgment for parents on damages was error since municipal court was required to transfer entire action, rather than just the damages portion of case, so the judgments of eviction and damages are void and the entire case is remanded to common pleas court.

Civil contempt. State ex rel. Yost v. Crossridge, Inc. | 2022-Ohio-1455 | 7th Appellate District | 3/28/22 In state's action for contempt against landfill operator for failure to comply with consent order which resolved environmental enforcement action, trial court's sentence imposed on operator for civil contempt was error where it failed to set forth specific purge conditions, as required for civil contempt, the jail term of consecutive sentences was excessive under R.C. 2705.05(A) guidelines because it was operator's first contempt sentence, and the goal of contempt is to obtain compliance rather than punishment.

Class action. Williams v. Kisling, Nestico, & Redick, L.L.C. | 2022-Ohio-1044 | 9th Appellate District | 3/30/22 In clients' class action against law firm alleging unlawful business practices by attorneys and several healthcare providers, the trial court erred in certifying a class since there was no rigorous analysis of how clients could prove liability with common evidence when individual class members were not similarly situated with respect to health insurance coverage, and there was no analysis of disgorgement of overcharged fees as a remedy where calculation of overcharge would involve numerous considerations and may not be established by common evidence.

Service. Cincinnati Ins. Co. v. Hall | 2022-Ohio-1112 | 2nd Appellate District | 4/1/22 In insurer's subrogation action against driver to recover payment made to insured after driver caused damage to insured's vehicle, the trial court erred in dismissing the action for lack of service of process since electronic return receipts showed that someone had signed for summons and complaint, there was no evidence that mail carrier had signed for driver, and receipts established compliance with Civ.R. 4.1(A)(1)(a).

Continuance/Counsel's schedule conflict. State ex rel. E.M. v. Jones | 2022-Ohio-1178 | 8th Appellate District | 4/1/22 In divorce action, relator's petition for a peremptory writ of mandamus to compel judge to grant a continuance because of counsel's scheduling conflict is denied since the court should not consider any motion for a continuance due to a conflict of trial assignment dates unless a copy of the conflicting assignment is attached to the motion and the motion is filed not less than 30 days prior to trial, Sup.R. 41(B)(1); in this case the motion was filed only 7 days before trial, R.C. 2731.06.

Temporary restraining order/Appeal. M.R. v. Niesen | 2022-Ohio-1130 | Supreme Court of Ohio | 4/6/22 In case in which a temporary restraining order (TRO) was issued to prohibit appellants from publishing personal identifying information about police officer, appeal is dismissed as moot since the TRO expired and no exceptions apply, including the one for an issue capable of repetition yet evading review, since it is not enough for an issue to be capable of repetition between some parties, the issue must be capable of repetition between the same parties, beyond unlikely in the instant case; also, the issue appealed is whether a TRO that acts as a prior restraint on speech should be immediately appealable.

Magistrate's decision/Objections/Tolling order. Simms v. Hupp | 2022-Ohio-1158 | 9th Appellate District | 4/6/22 In divorce action in which wife's motion for contempt was granted for husband's failure to reimburse children's uninsured healthcare expenses under shared parenting plan, trial court erred in overruling husband's objections to the magistrate's decision on reasoning that husband failed to file either a praecipe or a transcript of the proceedings

within 30 days of filing his objections since a tolling order was in effect when husband appealed denial of objections, the tolling order applied to deadlines for filing supplemental objections or a transcript, and husband's incorrect belief that no praecipe was needed did not constitute waiver of tolling order privilege.

Dismissal/Trial brief order. Stern v. Rob Oldham Properties, L.L.C. | 2022-Ohio-1232 | 8th Appellate District | 4/11/22 In plaintiff-trust's action against defendant-mortgagor for failure to pay balance due on loans, trial court erred in dismissing defendant's counterclaim on reasoning that defendant failed to file a trial brief as ordered since notice of possible dismissal was insufficient, enforcement of trial court order was arbitrary because neither party fully complied with the order, there was no actual disadvantage to the court in not having a complete trial brief, there was no surprise or undue prejudice to plaintiff, and there was no delay caused by defendant's failure to strictly adhere to trial court order.

Reconsideration/Panel of judges. Key Realty, Ltd. v. Hall | 2022-Ohio-1199 | Supreme Court of Ohio | 4/13/22 The judgment of the court of appeals is affirmed on the authority of Jezerinac v. Dioun, ___ Ohio St.3d ___, 2022-Ohio-509, which held that in reconsideration of a court of appeals' judgment, the panel with a replacement judge remains "the panel that issued the original decision" within the meaning of App.R. 26(A)(1)(c).

Reconsideration/Panel of judges. Norman v. Kellie Auto Sales, Inc. | 2022-Ohio-1198 | Supreme Court of Ohio | 4/13/22 The judgment of the court of appeals is affirmed on the authority of Jezerinac v. Dioun, ___ Ohio St.3d ___, 2022-Ohio-509, which held that in reconsideration of a court of appeals' judgment, the panel with a replacement judge remains "the panel that issued the original decision" within the meaning of App.R. 26(A)(1)(c).

Relief from judgment/Expert witness/ Conflict of interest. Dublin v. RiverPark Group, L.L.C. | 2022-Ohio-1294 | 10th Appellate District | 4/19/22 In city's action seeking appropriation of owner's property to construct a path and make roadway improvements, resulting in judgment for compensation to owner, trial court did not err in denying owner's Civ.R. 60(B)(2) motion for relief from judgment, arguing that it discovered new evidence of city's expert witness' subsequent brokerage contract with city, since evidence was not newly discovered where defendant failed to ask city's expert witness about any business dealings he had with city in addition to testifying as an expert, and at the time the expert signed the certification of no conflict of interest, he had no personal interest in or bias in favor of city.

Reply to memorandum in opposition. Henry Cty. Bank v. Toledo Radio, L.L.C. | 2022-Ohio-1360 | 3rd Appellate District | 4/25/22 In plaintiff-bank's action against defendant-employee of borrower, alleging default on promissory note, trial court erred in denying defendant's Civ.R. 60(B) motion to modify judgment and stay collection proceedings since the court's order denying defendant's motion was not issued in accordance with time limits set forth in Civ.R. 6(C)(1) because defendant was not allowed an opportunity to file a reply, and defendant's argument reasonably appears to sustain a reversal under circumstances of case, App.R. 18(C).

Remand. Bowens v. Bowens | 2022-Ohio-1383 | 10th Appellate District | 4/26/22 In divorce action involving a real property dispute between ex-husband and wife's father where trial court's judgment for ex-husband was reversed by the court of appeals and remanded, the trial court erred in ignoring the court of appeals' mandate to proceed consistent with its decision since, pursuant to an order of limited remand, the trial court has jurisdiction solely to carry out the mandate of the appellate court and may not consider the remanded case for any other purpose.

Judge disqualification. In re Disqualification of Wallace and Capizzi | 2022-Ohio-1330 | Supreme Court of Ohio | 4/26/22 Affidavit of disqualification of judges, filed by attorney-father of children in underlying custody case, is denied where, inter alia, affiant's claims regarding one judge are only that affiant has appeared before the judge in other cases and that affiant and judge are social media friends, and without more, those facts do not create the appearance that affiant is in a special position to influence the court or cast doubt on the judge's ability to act impartially; with regard to other judge, likely named in the affidavit in the event the first judge is disqualified, affiant has failed to establish that the first judge should be disqualified, so it is not appropriate to rule on second judge's potential disqualification.

Attorney fees. Kitchens v. Ruff | 2022-Ohio-1378 | 1st Appellate District | 4/27/22 In homeowner's breach of contract action against contractor for dispute over renovations, resulting in dismissal of homeowner's complaint, trial court erred in awarding attorney fees to contractor where he argued that homeowner's voluntary dismissal of appeal of dismissal of complaint demonstrated that the matter should never have been brought; contractor's motion for attorney fees was untimely under R.C. 2323.51, and the court expressly found that homeowner did not act in bad faith, which precluded award of attorney fees under the bad-faith exception to the American Rule.

Pleading/Amended complaint. Meehan v. Mardis | 2022-Ohio-1379 | 1st Appellate District | 4/27/22 In business owner's action alleging that former business partner conspired to divert company funds and property to third party, trial court did not err in denying owner's motion for leave to amend his complaint to include a claim for conversion against third party since evidence showed that owner unduly delayed filing his motion and offered no explanation for why he waited so long to correct an oversight in the original complaint, Civ.R. 15(A).

Arbitration award/Motion. Ohio Patrolmen's Benevolent Assn. v. Cleveland | 2022-Ohio-1403 | 8th Appellate District | 4/28/22 In labor union's action alleging that city was violating collective bargaining agreement by offering overtime shifts to non-bargaining employees, resulting in arbitration award for city, the trial court erred in granting union's application to vacate the arbitration award where union's pleading failed to comply with R.C. 2711.13 because it was captioned as a complaint rather than as a motion, and even if it could be construed as a motion, union failed to serve city's counsel of record within the limitations period.

Procedure (Cont.)

Necessary parties. Fabrizi Recycling, Inc. v. Cleveland | 2022-Ohio-1395 | 8th Appellate District | 4/28/22 In business' action against city for rejecting its bid for city projects in favor of allegedly higher bid, trial court erred in granting business' request for a declaratory judgment and injunctive relief to prevent city from entering into contracts with higher bidder where all parties who have interest that would be affected by declaration must be made parties to action pursuant to R.C. 2721.12(A), and because the business failed to join higher bidder as a party, the action must be dismissed for lack of subject matter jurisdiction.

Relief from judgment. Myers v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-1412 | 10th Appellate District | 4/28/22 In negligence action by inmate against state department arising from injuries inmate sustained when he was attacked after inmate notified department of impending attack, resulting in judgment for inmate and award of minimal damages, trial court did not err in granting inmate's Civ.R. 60(B)(5) motion where the trial court determined that the issue of inmate's damages had never been fairly litigated because inmate did not have a fair opportunity to present evidence establishing the nature and extent of his injuries.

Jury trial. Sharp v. M3C Invests., L.L.C. | 2022-Ohio-1394 | 8th Appellate District | 4/28/22 In plaintiff's action against car dealership defendants alleging, inter alia, violation of the Consumer Sales Practices Act for failure to refund deposit on defective car, resulting in a default judgment, trial court erred in denying plaintiff's request for a jury trial to determine damages where, although the trial court had discretion to conduct a damages hearing following entry of default judgment pursuant to Civ.R. 55(A), plaintiff complied in all respects with Civ.R. 38(D) by demanding a jury trial in the complaint and in the motion for default judgment, and the right to trial by jury is constitutionally inviolate.

Intervention/Necessary parties/ Legal status. Grande Voiture D'Ohio La Societe Des 40 Hommes Et 8 Chevaux v. Simpson | 2022-Ohio-1422 | 2nd Appellate District | 4/29/22 In plaintiff-state-level veterans club's foreclosure action against defendant-banned member of purported local club to collect on judgment awarding sanctions to plaintiff for defendant's violations of injunction, trial court did not err in denying application of purported local club to intervene in foreclosure of defendant's property to satisfy the sanctions judgment since purported local club is not a necessary party to the foreclosure action because it has no interest in the property, the purported local club is a legal nullity so intervention is impossible, and defendant failed to raise a claim for indemnification at the time sanctions were being litigated, R.C. 2329.02.

Service/Relief from judgment. Brookville Ents., Inc. v. Kessler Estate HCF Mgt., Inc. | 2022-Ohio-1420 | 2nd Appellate District | 4/29/22 In nursing facility's action seeking to hold estate administrator personally liable for unpaid charges incurred during decedent's residency, the trial court erred in denying administrator's Civ.R. 60(B) motion for relief from default judgment since personal service on administrator failed, presumption of service did not attach due to inconsistency in certified mail envelope filed with clerk of courts, and facility's counsel failed to verify that service had been made pursuant to Civ.R. 4.6(E) prior to filing motion for default judgment.

Appeal/Interlocutory order/App.R. 4(C)/Certified conflict. Deer Park Roofing, Inc. v. Oppt, 2022-Ohio-1469 | 2022-Ohio-1469 | 1st Appellate District | 5/4/22 In roofing company's action against contractor where contractor filed a third-party complaint, resulting in a summary judgment for the third-party defendants, prompting contractor to file a notice of appeal prior to trial court's issuance of its final judgment entry, contractor's appeal is dismissed for lack of jurisdiction since App.R. 4(C) does not apply to salvage appeals of clearly interlocutory orders that later merge into a final order; however, case law is not entirely consistent with respect to interpretation of App.R. 4(C) in cases where the notice of appeal is filed after an interlocutory decision is announced, and the instant court certifies a conflict to the Supreme Court of Ohio to answer the question: "Does a premature notice of appeal of a non-final order that is subsequently rendered final confer appellate jurisdiction under App.R. 4(C)?"

Judgment/Modification/Scrivener's error. Carlson v. Cincinnati | 2022-Ohio-1513 | 1st Appellate District | 5/6/22 In property owner's action seeking to stay demolition of vacant building on one of his properties where city's motion for summary judgment was granted on its counterclaims for unpaid fines and costs, the trial court erred in granting owner's motion to strike city's amended entry of satisfaction which was filed to correct scrivener's error where, because entry of satisfaction became inextricably intertwined with final judgment, modification cannot be accomplished by simple correction of a clerical-type error, and amended entry is considered a Civ.R. 60(B)(1) motion for relief from judgment.

Frivolous conduct/Counterclaims. Payson v. Phipps | 2022-Ohio-1525 | 2nd Appellate District | 5/6/22 In client's defamation action against attorney, trial court did not err in imposing sanctions against client where attorney's counterclaims were properly construed as a motion for sanctions pursuant to the frivolous conduct statute R.C. 2323.51, client did not demonstrate how he was prejudiced by the ruling converting counterclaims to a motion for sanctions because he was aware of the potential claim for sanctions since the beginning of the case, client had no facts to support his defamation claim, and imposition of sanctions was supported by competent, credible evidence.

Garnishment/Offsetting debt. Gauthier v. Gauthier | 2022-Ohio-1514 | 1st Appellate District | 5/6/22 In garnishment action in which wife sought to execute on a judgment obtained against husband in underlying divorce action, the trial court did not err in declining to find that husband had already satisfied wife's judgment where the evidence before the court consisted only of an enforceable order and contract arguably obligating wife to pay husband, without any judicial determination of the amount owed, and the instant garnishment action was not the appropriate proceeding to conduct a trial to determine the amount of money that wife owed under a separate contract.

Professional Responsibility

Reprimand. Medina Cty. Bar Assn. v. Schriver | 2022-Ohio-486 | Supreme Court of Ohio | 2/23/22 Attorney is issued a public reprimand.

Suspension. Cleveland Metro. Bar Assn. v. Whipple | 2022-Ohio-510 | Supreme Court of Ohio | 2/24/22 Attorney is suspended from the practice of law for one year, with six months stayed on conditions.

Suspension. Disciplinary Counsel v. Dusing | 2022-Ohio-589 | Supreme Court of Ohio | 3/1/22 Attorney is issued an interim suspension, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Owens | 2022-Ohio-606 | Supreme Court of Ohio | 3/3/22 Attorney is issued an interim suspension, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Rumes | 2022-Ohio-727 | Supreme Court of Ohio | 3/14/22 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Resignation. In re Resignation of Tripp | 2022-Ohio-728 | Supreme Court of Ohio | 3/14/22 Attorney resigned from the practice of law, with disciplinary action pending.

Unauthorized practice of law/Civ.R. 8(D)/Evidence. Ohio State Bar Assn. v. Pro-Net Fin., Inc. | 2022-Ohio-726 | Supreme Court of Ohio | 3/15/22 Complaint asserting that respondent-insurance company and related entities engaged in the unauthorized practice of law by counseling debtors and negotiating debt settlements on behalf of debtors is dismissed for insufficiency of evidence; respondent did not answer the complaint, but the general provision of Civ.R. 8(D) that averments in a pleading are admitted when not denied in a responsive pleading has no application in default proceedings involving the unauthorized practice of law, Gov.Bar R. VII(12)(B)(2), and also respondent was not a party to the agreed stipulations of the other parties and may not be bound by the factual stipulations contained therein.

Reinstatement. Disciplinary Counsel v. Hoague | 2022-Ohio-972 | Supreme Court of Ohio | 3/28/22 Attorney is reinstated to the practice of law.

Reinstatement. Cincinnati Bar Assn. v. Kathman | 2022-Ohio-1027 | Supreme Court of Ohio | 3/30/22 Attorney is reinstated to the practice of law.

Suspension. Columbus Bar Assn. v. Bahan | 2022-Ohio-1210 | Supreme Court of Ohio | 4/14/22 Attorney is suspended from the practice of law for six months, with the entire suspension stayed on conditions.

Resignation. In re Resignation of Wright | 2022-Ohio-1268 | Supreme Court of Ohio | 4/18/22 Attorney resigned from the practice of law, with disciplinary action pending.

Suspension. Columbus Bar Assn. v. Davis | 2022-Ohio-1286 | Supreme Court of Ohio | 4/20/22 Attorney is issued a one year suspension from the practice of law, with the suspension stayed on conditions.

Suspension. Lorain Cty. Bar Assn. v. Nelson | 2022-Ohio-1288 | Supreme Court of Ohio | 4/21/22 Attorney is suspended from the practice of law for two years, with the second year stayed.

Suspension. Disciplinary Counsel v. O'Diam | 2022-Ohio-1370 | Supreme Court of Ohio | 4/28/22 Judge is suspended from the practice of law for six months, with the suspension stayed on conditions.

Suspension. Disciplinary Counsel v. Purola | 2022-Ohio-1476 | Supreme Court of Ohio | 5/4/22 Attorney is issued an interim default suspension, with reinstatement on conditions.

Public and Public Finance

Public records/Inmate's request/ Argument. State ex rel. Parker Bey v. Byrd | 2022-Ohio-476 | Supreme Court of Ohio | 2/22/22 Denial of relator-inmate's petition for writ of mandamus to compel respondent-clerk of courts to produce journal entries was not error where, inter alia, relator's claim is without merit that respondent should be barred from arguing that relator failed to comply with R.C. 149.43(B)(8) requiring approval of the sentencing judge to obtain public records relating to a criminal investigation or prosecution; respondent originally made this argument in her motion for summary judgment in the proceedings leading up to the first appeal, and once the case was remanded, the argument was again properly under consideration by the court.

Public records/Scope of records search. Barack v. Thalman | 2022-Ohio-1355 | Court of Claims | 3/9/22 In requester's action seeking to compel mayor to provide copies of correspondence of city employees regarding requester or his property, special master recommends that the court order mayor to locate and produce all responsive records kept on private devices or in accounts of employees listed in request where mayor's refusal to look for responsive records everywhere they may reasonably be kept negates her assertion that no additional records exist, and she was required to preserve potentially relevant records including records kept on personal devices, R.C. 149.43.

Services billing. Stanfield v. Attica | 2022-Ohio-747 | 3rd Appellate District | 3/14/22 In homeowners' action against village alleging wrongful and discriminatory billing for water and sewer services, trial court erred in concluding that village had the authority to compound cumulative unpaid water and sewer assessment each month with the 10 percent penalty since the language of the ordinance makes no mention of compounding penalties.

Penalties. Colerain Twp. Bd. of Trustees v. Bench Billboard Co. | 2022-Ohio-923 | 1st Appellate District | 3/25/22 In action by township against advertiser to enforce ordinance declaring all bench billboards located in public right-of-ways in the township to be a nuisance and imposing civil fines for violation, resulting in summary judgment to township for specific bench billboards, trial court erred in imposing penalties at penalties hearing since township presented no evidence of any violations of benches identified by the court in its summary judgment decision, but rather township submitted photographs of benches that township suggested were in violation, based on background features.

Public and Public Finance (Cont.)

Taking of property/Pleading. Regulic v. Columbus | 2022-Ohio-1034 | 10th Appellate District | 3/29/22 In homeowners' mandamus claim against city seeking to compel authorities to institute appropriation proceedings for involuntary taking of property after their property was repeatedly flooded with sewage, trial court erred in granting city's motion for judgment on the pleadings where city's act of removing holding tank from nearby park may have caused increased flooding of homeowners' property, and homeowners' allegations were sufficient to require further proceedings on the mandamus claim.

City legal action. Cincinnati v. State | 2022-Ohio-1019 | 1st Appellate District | 3/30/22 In taxpayer's action seeking to stop city from continuing underlying civil action against state without first obtaining city council approval, trial court erred in granting injunctive relief to taxpayer since city has power to sue pursuant to R.C. 715.01, city charter has no language limiting authority of chief legal officer with respect to representation of city in lawsuits, and words in charter concerning representation are equivalent to providing solicitor with power to prosecute or defend suits for city.

Open Meetings Act. State ex rel. Mohr v. Colerain Twp. | 2022-Ohio-1109 | 1st Appellate District | 4/1/22 In taxpayers' action against township, alleging that land use committee violated the Open Meetings Act, summary judgment in favor of taxpayers was not error since the committee was a public body as defined in R.C. 121.22(B)(1) where it was a subordinate group to which township trustees referred business for consideration, photographic evidence showed that proper quorum of members met in closed meeting, and documents presented as evidence that committee deliberated over public business were properly authenticated under Evid.R. 901(A).

Immunity. Cincinnati v. Rennick | 2022-Ohio-1110 | 1st Appellate District | 4/1/22 In city's nuisance action against property owners alleging that owners' business operations stretched onto their single-family parcels where owners, in response, maintained that the city's claims arose from its failure to maintain inlet pipe and drainage system, trial court did not err in denying city's immunity-based motion for judgment on the pleadings where there is insufficient evidence to determine whether the city's functions were governmental or proprietary, pursuant to R.C. 2744.02(B)(2), and whether the city was entitled to immunity under R.C. 2744.01(G).

Traffic photo monitoring/Justiciable claim. Toledo v. State | 2022-Ohio-1192 | 6th Appellate District | 4/8/22 In city's action seeking a declaration that state budget bill violates the state constitution by requiring a law enforcement officer to be present at all times during operation of traffic law photo-monitoring devices, trial court erred in declining to consider city's claims related to R.C. Ch. 4511 based on its conclusion that those claims were no longer justiciable since, although city suspended its photo monitoring program, the suspension was explicitly temporary in nature and would last only until city could modify the program, and the economics of the program were impacted by requirements in R.C. Ch. 4511.

Immunity/Contractor. Rodriguez v. Catholic Charities Corp. | 2022-Ohio-1317 | 8th Appellate District | 4/21/22 In estate administrator's action against nonprofit organizations and county center alleging fraudulent failure to provide support to family of deceased child, trial court did not err in denying religious charity's governmental immunity-based motion for summary judgment since the charity is not a political subdivision under R.C. 2744.01, it was not an employee of a political subdivision under R.C. 2744.03 because it independently carried out its duties under contract with county, and evidence supports charity's title as independent contractor.

Public money loss. State ex rel. Yost v. Burns | 2022-Ohio-1326 | Supreme Court of Ohio | 4/26/22 In state's action against CEO of school for loss of public money allotted to school, the court of appeals did not err in reversing trial court's summary judgment in favor of the state where, although R.C. 9.39 imposes strict liability on public officials for loss of public funds with which they have been entrusted, the funds received by the school were not subject to CEO's control, and controller of funds acted independently without oversight from CEO.

Zoning/Nonconforming use. Al-Khatib v. Harrison Twp. Bd. of Zoning Appeals | 2022-Ohio-1418 | 2nd Appellate District | 4/29/22 In property owner's application for a certificate of zoning compliance to operate a market on property that was previously allowed a permit for nonconforming use, the trial court did not err in reversing board of zoning appeals' denial of the certificate since the previous nonconforming use had not been abandoned where closure of the property for several years was due to the poor health of the previous owner and illness is not a voluntary act under the township ordinance or R.C. 519.02, so the board failed to show that previous owner had the intention to abandon the nonconforming use.

Immunity/Wrongful death. Morrison v. Warrensville Hts. | 2022-Ohio-1489 | 8th Appellate District | 5/5/22 In wrongful death and survivorship action arising from death of individual who called 9-1-1 during an asthma attack where evidence shows that the emergency squad originally went to an incorrect address, trial court did not err in denying emergency service employees' governmental immunity-based motion for summary judgment since the court found that there remained genuine issues of material fact as to whether the employees' conduct was reckless, even though their conduct was not wanton, R.C. 2744.03(A)(6)(b).

Real Property

Deed restrictions. Siltstone Resources, L.L.C. v. Ohio Pub. Works Comm. | 2022-Ohio-483 | Supreme Court of Ohio | 2/23/22 In energy companies' action against state public works commission to declare that recipient of grant from Clean Ohio Conservation Fund, R.C. 164.20 et seq., administered by the commission, did not violate deed restrictions when recipient signed oil and gas lease in which energy companies subsequently purchased interest, the court of appeals did not err in reversing trial court's judgment which found that deed restrictions on transfer of the property applied only to the surface; the reference to "property" in the restrictions on transfer referred to both surface and subsurface, and grant recipient's transactions were in violation of the restrictions on transfer where grant recipient did not seek commission's consent.

Foreclosure/Estate/Jurisdiction. Fifth Third Bank, Natl. Assn. v. Leveck | 2022-Ohio-546 | 2nd Appellate District | 2/25/22 In foreclosure action filed by bank in the common pleas court against insolvent estate of deceased borrower, the trial court erred in reasoning that it lacked jurisdiction on the basis that the probate court acquired jurisdiction over the matter first; jurisdiction was first invoked in the court of common pleas when the bank filed its foreclosure complaint since the insolvency proceedings, the appraisal of the real property in the probate court, and the parties' correspondence did not demonstrate that the probate court acquired jurisdiction over the sale of the real property at issue.

Partition. Redding v. Cantrell | 2022-Ohio-567 | 12th Appellate District | 2/28/22 In plaintiff's action seeking declaration that defendant-former romantic partner had no interest in property in which they resided together for seven years, maintained a single household, and held a joint bank account, trial court did not err in ordering partition of the property since plaintiff's credit card debts, which were paid for with proceeds from home equity loan under terms of loan agreement, were accumulated during parties' relationship, and there was no evidence that the charges were attributable only to plaintiff.

Merger by deed. Talmadge Crossing, L.L.C. v. The Andersons, Inc. | 2022-Ohio-645 | 6th Appellate District | 3/4/22 In commercial property buyer's breach of contract action against seller for damages due to vandalism of purchased building that happened after buyer's final inspection, summary judgment for seller was not error since the doctrine of merger by deed applied to merge the contract with the deed because the buyer accepted the deed without qualification or reservation of rights, and the contract clearly provided that the property was purchased in its condition as of closing and delivery of deed to premises.

Mortgage/Authority. Freedom Fund v. Lvreis, Inc. | 2022-Ohio-786 | 1st Appellate District | 3/16/22 In plaintiff-real estate company's action against defendant-mortgagee seeking to quiet title to property, the trial court erred in quieting title to plaintiff, finding that the mortgage was invalid, since plaintiff's shareholder had actual authority under company's operating agreement to mortgage property, and former R.C. 1705.35 does not conflict with operating agreement and provides that mortgage was valid because shareholder executed the mortgage.

Foreclosure/Prematurity rents. 255 Fifth St. Holdings, L.L.C. v. 255 Fifth Ltd. Partnership | 2022-Ohio-851 | 1st Appellate District | 3/18/22 In lender's foreclosure action against borrowers in which lender asserted that rents collected by the borrowers before the notes' maturity date (prematurity rents) were part of collateral that secured the notes, summary judgment for lender was error since the loan documents provided that lender's interest in rents did not apply to prematurity rents collected prior to default; lender's prospective right to prematurity rents was based on the occurrence of default, and borrowers' operating account in which prematurity rents were deposited was not collateral securing the loan.

Mineral interests/Notice of abandonment. Fonzi v. Brown | 2022-Ohio-901 | Supreme Court of Ohio | 3/24/22 In action by plaintiffs-owners of surface rights to land to have mineral interests in the land deemed abandoned, court of appeals' judgments are affirmed holding that the trial court erred in finding that plaintiffs exercised reasonable diligence to locate holders prior to publishing notice of abandonment under the Dormant Mineral Act where plaintiffs had specific knowledge that holders lived in a county out of state, plaintiffs failed to conduct any search into public records for that county, and this was per se unreasonable under the facts of the case, R.C. 5301.56(E).

Foreclosure/Mechanic's lien. WWSD, L.L.C. v. Woods | 2022-Ohio-952 | 10th Appellate District | 3/24/22 In plaintiff-real estate investment company action alleging fraud and slander of title against defendant-nonprofit that claimed a mechanic's liens for making renovations on the property that plaintiff had purchased at sheriff's sale where the trial court issued a summary judgment to plaintiff, the court did not err in denying defendant's motion for JNOV and new trial where a motion for new trial does not apply to a summary judgment, and therefore the motion is rendered moot, and defendant filed the mechanic's liens after the property was purchased by plaintiff at sheriff's sale, which was indicative of bad faith and reckless behavior.

Mineral interests/Arbitration. French v. Ascent Resources-Utica, L.L.C. | 2022-Ohio-869 | Supreme Court of Ohio | 3/24/22 In action to declare that oil and gas leases expired for lack of production, the court of appeals erred in reversing trial court's denial of defendant's motion for an arbitration stay since an action seeking a determination that an oil and gas lease has expired by its own terms is a controversy involving the title to or the possession of real estate and, under R.C. 2711.01(B)(1), the action is not subject to arbitration.

Easement/Implied. Anderson v. Fleagane | 2022-Ohio-1120 | 7th Appellate District | 3/28/22 In plaintiffs-homeowners' action against defendants-neighbors seeking to quiet title to driveway easement, summary judgment for plaintiffs was not error where severance of unity of ownership occurred when defendants conveyed the lot to owners previous to plaintiffs, at which time the lot was landlocked after the state appropriated part of the property, and therefore there was an implied easement regardless of plaintiffs' constructive knowledge that the property was landlocked.

Contract/Breach. KSMAC Holdings, Ltd. v. Ice Zone Realty, Ltd. | 2022-Ohio-1456 | 7th Appellate District | 3/31/22 In action by purchaser of ice rink property asserting breach of contract against seller for removing refrigerant from rink when purchaser exercised its option to purchase the previously leased rink, summary judgment in favor of seller was error where the contract was ambiguous as to the conveyance of equipment and the question remains whether refrigerant was part of chilling equipment, evidence showed that seller shielded removal of refrigerant by denying purchaser access to the area, and evidence also shows that the parties intended transfer of an operational rink.

Real Property (Cont.)

Foreclosure/Affirmative defenses. Bridge Health Care Partners, L.L.C. v. LTAH Real Estate Holdings, L.L.C. | 2022-Ohio-1053 | 7th Appellate District | 3/31/22 In foreclosure action brought by, inter alia, plaintiff-assignee of loan which defendant-real estate holding company obtained to build hospital where defendant filed a counterclaim and affirmative defenses, trial court's dismissal of affirmative defenses was error since joint motion to dismiss related only to defendant's counterclaim rather than to affirmative defenses, trial court provided insufficient reasoning to support the dismissal of defendant's affirmative defenses, and without sufficient explanation by the court, there is no basis to hold that defendant is prevented from presenting any affirmative defenses to the complaint.

Eviction/Bankruptcy/Standing. Jones v. Dlugos | 2022-Ohio-1076 | 8th Appellate District | 3/31/22 In forcible entry and detainer action prompted by defendants' failure to make payment pursuant to land contract where defendants subsequently filed for bankruptcy, trial court did not err in ruling that since defendants did not list their counterclaim in the debtor's schedule of assets and liabilities, the counterclaim did not become part of the bankruptcy estate, so they lacked standing to pursue the counterclaim, and they cannot claim that the bankruptcy trustee abandoned the counterclaim since an asset must be listed in the debtor's schedule of assets and liabilities before it can be abandoned.

Tax foreclosure. Cuyahoga Cty. Treasurer v. 440 High St., L.L.C. | 2022-Ohio-1239 | 8th Appellate District | 4/14/22 In county treasurer's tax foreclosure action against property owner for delinquent payment of taxes on property, trial court did not err in denying property owner's motion to vacate confirmation order and to stay confirmation of sale where property owner failed to demonstrate how the pandemic would operate as a meritorious defense to foreclosure because foreclosure was issued prior to declaration of pandemic, and property owner did not demonstrate excusable neglect in its inability to secure funding to redeem interest in property until after confirmation of sale.

Appropriation. Mill Creek Metro. Dist. Bd. of Commrs. v. Less | 2022-Ohio-1289 | 7th Appellate District | 4/14/22 In park district's action to appropriate owner's private property for development of recreational bikeway, trial court erred in denying owner's motions for summary judgment since district was not authorized to appropriate owner's property because R.C. 1545.11 expressly states that property may only be appropriated for purposes of conversion of forest reserves and conservation of natural resources, and just because bikeway for public use may benefit general welfare of public, it does not meet statutory conditions.

Sale of home/Fraudulent concealment. Fowerbaugh v. Sliman | 2022-Ohio-1314 | 8th Appellate District | 4/21/22 In home buyers' action against seller alleging fraudulent concealment for failure to disclose defects in home at the time of sale, summary judgment and award of attorney fees in favor of buyers was not error since there was evidence that renovation work was performed by seller without proper permits, that buyers reasonably and justifiably relied on seller's misrepresentations and omissions in property disclosure form, and that seller exhibited actual malice through conscious disregard for buyers' rights and safety, precluding the application of the doctrine of caveat emptor, R.C. 5302.30.

Eviction. Turner v. Ormandy | 2022-Ohio-1437 | 9th Appellate District | 5/2/22 In commercial property owner's forcible entry and detainer action against tenant for failure to vacate premises following termination of oral lease, trial court did not err in ordering writ of possession to issue since tenant failed to show how testimony of owner's daughter, who holds a power of attorney for her mother, undermined the legitimacy of the proceedings, tenant refused to sign a written lease, he failed to show that he was not a tenant, and owner satisfied notice requirements of R.C. 1923.04(A).

Mortgage/Promissory estoppel. Covel v. PNC Bank, NA | 2022-Ohio-1477 | 9th Appellate District | 5/4/22 In action by homeowner claiming promissory estoppel, alleging that bank told her that refinancing her first mortgage loan would not interfere with her second HUD mortgage and, after first mortgage loan was satisfied, HUD accelerated the second mortgage, demanding payment and initiating collection proceedings, trial court did not err in granting bank's motion for summary judgment since the promissory estoppel claim could not exist because there was an express contract regarding homeowner's payment obligations on the HUD second mortgage; the bank also argued that promissory estoppel does not overcome the statute of frauds.

Condominium/Ownership declaration/Attorney fees. Harbour Light Condominium No. 4. v. Cavallo | 2022-Ohio-1501 | 8th Appellate District | 5/5/22 In condominium complex's action seeking a declaratory judgment that condominium owner was in violation of ownership declaration for noxious pet odor in his unit, trial court erred in declining to award attorney fees to complex where evidence showed that owner violated the declaration and failed to take appropriate measures to remove the source of odor; R.C. 5311.19(A) allows award of attorney fees for violation of condominium covenants, and although amount of fees awarded is within court's discretion, award of zero was an abuse of discretion.

Condominium/Construction/Remediation. Wood v. Cashelmara Condominium Unit Owners Assn., Inc. | 2022-Ohio-1496 | 8th Appellate District | 5/5/22 In condominium owners' action against owners association, alleging breach of contract for failure to timely stop reconstruction of unit below that of owners and to restore their unit to its previous condition, summary judgment for association was error where jurat swearing in verified complaint showed that association had notice that neighbor was destroying common areas, and the question remains as to whether the common area between units was properly restored with an adequate substitute for destroyed ceiling, R.C. 2319.02.

Taxation

Real property/Valuation. Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision | 2022-Ohio-610 | 8th Appellate District | 3/3/22 In taxpayer's challenge to the valuation of real property, the board of tax appeals erred on remand in failing to comply with the mandate to weigh and address appraiser's evidence along with evidence of sale of the property

in making the value determination of the property; under amended R.C. 5713.03, the sale price of property is not conclusive evidence of the subject property's value but only presumptively represents the value of the unencumbered fee-simple estate.

Sales/Computer-related services/ Personal services. Cincinnati Fed. S. & L. Co. v. McClain | 2022-Ohio-725 | Supreme Court of Ohio | 3/15/22 Taxpayer's appeal of decision by board of tax appeals (BTA) upholding tax commissioner's denial of claim for sales-tax refund in connection with purchase of computerized services addresses the status of transactions for acquisition of automatic data processing, electronic information services and computer services where the relevant statutes carved out computer-related services as taxable while leaving personal or professional services outside the scope of the tax; the BTA's decision is affirmed regarding taxpayer's refund claim under R.C. 5739.01(Y)(2)(a) and vacated as to the refund claim under R.C. 5739.01(Y)(2)(e) and remanded with the instruction that the BTA apply the true-object test to the service charges at issue.

Resort-area gross receipts. Colonial, Inc. v. McClain | 2022-Ohio-1149 | Supreme Court of Ohio | 4/7/22 In village resort's application for a tax refund seeking to recover locally imposed resort-area gross receipts excise tax, the board of tax appeals did not err in denying the refund claim since the village qualifies as resort area under R.C. 5739.101, and the statute contains no language indicating that a previously enacted resort-area tax has an end date or that there is requirement to re-enact the tax levy after each decennial census.

Real property. REO Invests. L.L.C. v. Cuyahoga Cty. Bd. of Revision | 2022-Ohio-1171 | 8th Appellate District | 4/7/22 In taxpayer's challenge to the valuation of two distressed single family homes it purchased and renovated where the board of revision (BOR) reduced the valuation from auditor's valuation and taxpayer appealed to the board of tax appeals (BTA) to claim further reduction in tax valuation, the BTA erred in reinstating the original auditor's valuation since when the BOR has reduced the value of property based on owner's evidence, that value has been held to eclipse the auditor's original valuation, Bedford Bd. of Edn.

Real property/Foreclosure/Excess proceeds. Hamilton Cty. Treasurer v. Scott | 2022-Ohio-1467 | 1st Appellate District | 5/4/22 In county treasurer's tax foreclosure action against taxpayer-property owner seeking sale of property to satisfy tax debt, trial court did not err in ordering distribution to taxpayer of excess proceeds remaining after judicial sale of property where, although taxpayer failed to make timely demand for payment pursuant to R.C. 5721.20, due process required notice to taxpayer of excess funds to which he was entitled before funds could be distributed to state, and he did not receive such notice.

Torts

Medical malpractice/Statute of repose. Britton v. Ciraldo | 2022-Ohio-600 | 9th Appellate District | 3/2/22 In medical malpractice action against physician alleging negligent care which led to patient's injuries, trial court did not err in granting physician's motion for judgment on the pleadings, Civ.R. 12(C), where patient and husband dismissed their initial complaint and then refiled complaint outside the statute of repose for medical claims, R.C. 2305.113; the recent Supreme Court of Ohio ruling that expiration of the statute of repose precludes application of the saving statute held that its ruling was not limited to prospective application.

Wrongful death/Medical statute of repose. Everhart v. Coshocton Cty. Mem. Hosp. | 2022-Ohio-629 | 10th Appellate District | 3/3/22 In widow's wrongful death action against physician for failure to act on decedent's radiology report which showed a condition allegedly requiring follow-up treatment, the trial court erred in granting physician's motion for judgment on the pleadings since neither R.C. 2125.02 nor R.C. 2305.113 provides for a statute of repose for wrongful death arising out of a medical claim, wrongful death and medical malpractice are distinct causes of action, and because the medical malpractice statute of repose does not apply, widow is not barred from pursuing a claim.

Slip and fall. Winston v. Pizza Hut | 2022-Ohio-859 | 2nd Appellate District | 3/18/22 In plaintiff's slip and fall negligence action against defendant-restaurant for injuries sustained when she slipped on water and fell upon entering defendant's lobby, summary judgment in favor of defendant was not error where, although the parties' factual recitations were diametrically opposed, rainwater inside the entrance was an open and obvious condition because water tracked in by other patrons is to be expected on a rainy day.

Slip and fall. Smith v. Ironwood | 2022-Ohio-875 | 12th Appellate District | 3/21/22 In condominium owner's slip and fall negligence action against owners' association for injuries sustained when owner slipped on ice and fell in common area, judgment in favor of owner was error where the substantially more dangerous exception to the no-duty winter rule was not invoked by the mere quantity of naturally accumulating ice, there was no evidence that association had superior knowledge that the icy condition was more hazardous than what is expected in wintertime, and owner was aware of a drainage problem in area where she fell.

Negligence/Directed verdict/Evidence. Poteet v. MacMillan | 2022-Ohio-876 | 12th Appellate District | 3/21/22 In pedestrian's negligence action against driver for injuries sustained when pedestrian was struck by driver's vehicle at entrance to parking lot, trial court erred in granting directed verdict to pedestrian that she sustained a permanent injury since three physicians gave conflicting testimony regarding permanence of pedestrian's injuries, and by failing to specify the injury it considered permanent, the court inadvertently created ambiguity prejudicial to driver.

Evidence/Privilege. Sexton v. Healthcare Facility Mgt., L.L.C. | 2022-Ohio-963 | 2nd Appellate District | 3/25/22 In plaintiff-executor's multiclaim action against defendant-care facility alleging that decedent was assaulted by defendant's employee while residing at facility, trial court erred in denying defendant's motion for a protective order to preclude production of documents where some documents were prepared by, or for the use of, a peer-review committee and were therefore privileged pursuant to R.C. 2305.252, other documents were privileged medical records under R.C. 2317.02, and simple redaction of names was insufficient to provide entitled protection.

Negligence/Evidence/Medical records. Bokma v. Raglin | 2022-Ohio-960 | 2nd Appellate District | 3/25/22 In plaintiff's action against defendant-driver for injuries sustained in vehicle accident, trial court did not err in ordering plaintiff to sign medical authorizations where, although medical records are generally privileged from disclosure under R.C. 2317.02(B)(1), plaintiff sought redress for both physical and emotional pain and suffering and therefore waived privilege under the statute for both types of medical records, and she did not file a motion for in camera review of records, Civ.R. 26(B).

Slip and fall/Evidence. Fernandez v. Walmart Supercenter #3860 | 2022-Ohio-1304 | 7th Appellate District | 3/25/22 In store patron's slip and fall negligence action filed after patron's orthopedic boot slipped on a substance on the floor of the store, causing her to fall and sustain injury, trial court did not err in granting summary judgment to store since there was no evidence about when the hazard was created and patron cannot rely on a constructive knowledge analysis or that a store employee had actual knowledge of the hazard, so there is no genuine question of material fact; also, although both parties' briefs heavily relied on the video evidence of the incident and patron's deposition, neither of those documents was part of the record on appeal.

Wrongful death/Medical statute of repose. McCarthy v. Lee | 2022-Ohio-1033 | 10th Appellate District | 3/29/22 In plaintiff's wrongful death action against defendant-physician for failure to order tests and timely diagnose condition, trial court erred in granting defendant's motion for judgment on the pleadings since wrongful death is a separate cause of action from medical malpractice, the statute of repose for medical claims under R.C. 2305.113(C) does not apply, and therefore plaintiff was not barred from pursuing wrongful death claim.

Damages/Standard. McCombs v. Ohio Dept. of Dev. Disabilities | 2022-Ohio-1035 | 10th Appellate District | 3/29/22 In mother's abuse and neglect action against state department, alleging acts of abuse by department's employees against disabled son who was residing in developmental center, trial court erred in applying an invented standard of objective observation and subjective assessment to determine damages where son's disability of being non-verbal was used against him to reduce damages, the damages award was inconsistent with undisputed evidence, and evaluation must be made in light of son's alternative manifestations of pain and suffering and in the context of circumstances within which he experienced abuse and neglect.

Negligence/Collateral estoppel. Coleman v. Warren | 2022-Ohio-1020 | 1st Appellate District | 3/30/22 In negligence action, filed after traffic court found defendant not guilty of traffic light violation, trial court erred in granting summary judgment to defendant in response to his argument that the issues were already decided in his favor in the previous case since no privity exists, collateral estoppel does not apply, and material issues of fact remain to be determined since, inter alia, the burden of proof and rules governing traffic court proceedings differ from civil proceedings, plaintiff did not participate in, or have any right to control, the traffic court proceedings, and plaintiff had no ability to appeal the traffic court judgment.

Medical malpractice/Settlement/Verification. Setters v. Durrani | 2022-Ohio-1022 | 1st Appellate District | 3/30/22 In plaintiffs' action alleging, inter alia, negligence against defendants-physician and clinic, resulting in judgment for plaintiffs, trial court erred in denying defendants' Civ.R. 60(B) motion for relief from judgment where amount of pretrial settlement was provided by plaintiffs' counsel and verified by counsel for hospital, but defendants were not allowed to verify its accuracy, and even if defendants were not allowed access to entire settlement agreement, there are other methods which may be sufficient for due-process purposes.

Slip and fall. Naso v. Victorian Tudor Inn, L.L.C. | 2022-Ohio-1065 | 8th Appellate District | 3/31/22 In patron's slip and fall negligence action against inn, claiming she was distracted by antiques causing her to be injured by falling down a flight of stairs, trial court did not err in granting a summary judgment to inn on reasoning that patron did not describe a situation in which an ordinary visitor to the inn would be distracted from seeing the stairs, noting that antiques displayed throughout the living room are commonplace in historical inns, and patron admitted that she could have seen the stairs had she only looked, so there were no attendant circumstances to negate the application of the open-and-obvious doctrine.

Punitive damages. Gibson Bros., Inc. v. Oberlin College | 2022-Ohio-1079 | 9th Appellate District | 3/31/22 In action by business against college for libel, intentional infliction of emotional distress, and intentional interference with business relationship, arising from college's handling of student protest against business, where jury ruled in favor of business and awarded damages, the trial court's cap on the award of punitive damages is affirmed since business' argument that the statute is unconstitutional as applied is meritless where the business has not established by clear and convincing evidence that, as applied in this case, R.C. 2315.21 bears no real and substantial relation to the general welfare of the public or is arbitrary and unreasonable, Arbino.

Medical malpractice/Expert witness. Gibson v. Soin | 2022-Ohio-1113 | 2nd Appellate District | 4/1/22 In plaintiff-estate administrator's medical malpractice and wrongful death action against defendants-physicians for improperly evaluating decedent's pre-surgical testing, trial court did not err in granting defendants' motion for a directed verdict where plaintiff's expert witness was properly disqualified under Evid.R. 601(B)(5) because he did not practice in the same or similar specialty as defendants, and the witness did not testify that his standard of care when evaluating a referred patient was similar to the standard for defendants in reviewing pre-surgical test results.

Negligence/Recreational user. Stone v. Northmont City Schools | 2022-Ohio-1116 | 2nd Appellate District | 4/1/22 In plaintiff's negligence action against defendant-school for injuries sustained when he rode bike into rope placed on trail prior to a private race, summary judgment in favor of defendant was not error since plaintiff was a recreational user of multi-use trail on defendant's property, the rope across trail became a condition of the premises and did not cause the trail to be closed to

public, and where the condition of the premises was not changed by the rope, defendant was not liable pursuant to R.C. 1533.181.

Wrongful death/Medical statute of repose. Davis v. Mercy St. Vincent Med. Ctr. | 2022-Ohio-1266 | 6th Appellate District | 4/15/22 In executor's medical malpractice and wrongful death action against healthcare providers for allegedly causing wife's death, trial court erred in reasoning that the medical statute of repose barred the claims and in granting providers' motion for judgment on the pleadings since wrongful-death actions are special statutory actions not subject to the statute of repose period for medical-malpractice actions set forth in R.C. 2305.113, and the Wrongful Death Act under R.C. 2125.02(D) does not contain a statute of repose applicable to actions predicated on claims of medical negligence.

Wrongful death/Medical statute of repose. Wood v. Lynch | 2022-Ohio-1381 | 10th Appellate District | 4/26/22 In estate administrator's wrongful death action against healthcare providers for prescribing narcotics for his wife, allegedly causing her death, trial court erred in granting judgment on the pleadings in favor of providers on reasoning that the action was barred by the medical statute of repose, R.C. 2305.113, since a wrongful death claim is not a derivative claim subject to the medical statute of repose, and the administrator was not barred from pursuing the claim, R.C. 2125.02.

Legal malpractice/Conflict of interest. Revolaze, L.L.C. v. Dentons US, L.L.P. | 2022-Ohio-1392 | 8th Appellate District | 4/28/22 In plaintiff's legal malpractice action arising from patent enforcement litigation in which plaintiff engaged defendant-international law firm, which was subsequently disqualified for a conflict of interest, resulting in plaintiff's successful claim that defendant's malpractice subjected plaintiff to increased legal fees and expenses and lost licensing revenue, trial court did not err in denying defendant's Civ.R. 50(B)(1) motion for JNOV since plaintiff presented legally sufficient evidence for the jury to conclude that defendant breached the standard of care by including a specific company in the patent enforcement litigation that experts opined created a clear conflict of interest, and the opinions refute defendant's claim that the disqualification was not foreseeable, Prof.Cond.R. 1.7(a)(1)(2).

Medical statute of repose/Derivative claim. McCarthy v. Lee | 2022-Ohio-1413 | 10th Appellate District | 4/28/22 Dismissal for failure to state a claim, Civ.R. 12(B)(6), of loss of consortium complaint filed on behalf of children of patient was not error since the derivative claims were based on an underlying medical negligence action in which judgment was rendered for defendants due to expiration of the medical claim statute of repose, R.C. 2305.113(C), a derivative claim cannot exist without an underlying principal claim, and the principal claim itself was barred by the statute of repose; however, when the principal claim fails due to expiration of the statute of limitations, rather than the statute of repose, the plaintiff is without a remedy but the derivative claim remains and can proceed if it is filed timely within its statute of limitations.

Traffic and OVI

Speeding. State v. Allenbaugh | 2022-Ohio-582 | 11th Appellate District | 2/28/22 Following a 2018 conviction of speeding, R.C. 4511.21(B)(1)(a), that was reversed for failure of the trial court to hold a Daubert hearing on the reliability of a laser device in the absence of defendant at the hearing and on remand cause is dismissed with prejudice, judgment is affirmed, but the trial court's judgment entry is modified to vacate the finding that probable cause existed for filing the citation since the probable cause determination authorized by Crim.R. 5(B) is not applicable to this case.

Impaired driving. State v. Clinger | 2022-Ohio-723 | 6th Appellate District | 3/11/22 In an appeal by the state of grant of motion to suppress in OVI prosecution, the trial court did not err since officer did not have a reasonable, articulable suspicion to warrant administering field sobriety tests where the video evidence supported the court's conclusion that appellee's speech was not slurred prior to officer's request that appellee exit his vehicle, nor was the odor of raw marijuana and the condition of appellee's eyes, without further indicia of intoxication, sufficient to show that officer had a reasonable, articulable suspicion that appellee was operating his vehicle while intoxicated.

Impaired driving. State v. Ramos | 2022-Ohio-886 | 3rd Appellate District | 3/21/22 In a conviction of OVI, R.C. 4511.19(A)(1)(j)(i) and R.C. 4511.19(A)(1)(j)(ix), denial of motion to suppress was not error where appellant voluntarily pulled off the road onto the berm as trooper was following him after a citizen report of appellant's erratic driving, and trooper had reasonable suspicion of safety-related concerns to question appellant in order to address trooper's concerns and, following interaction with appellant, officer had reasonable suspicion to expand the scope of the encounter to investigate whether appellant had committed an OVI offense by conducting field sobriety tests that led to the arrest.

Impaired driving. State v. Boucher | 2022-Ohio-978 | 5th Appellate District | 3/24/22 In a conviction of, inter alia, two counts of OVI, R.C. 4511.19(A)(1)(a) and (A)(2), denial of motion to suppress was not error where officer had reasonable suspicion of traffic violations where he observed appellant speeding twice, the second time by radar with appellant driving 63 m.p.h. in a 35 m.p.h. zone; also, appellant was not denied due process by being required to wear a mask during part of the proceedings due to COVID concerns.

Impaired driving. State v. Nunnari | 2022-Ohio-1003 | 11th Appellate District | 3/28/22 In state's appeal of grant of motion to suppress breath alcohol results in OVI prosecution and defendant's appeal of denial of motion to suppress the traffic stop, the trial court did not err in denying the motion to suppress the traffic stop where, although trooper could not maintain visual contact with appellant's vehicle during the full pursuit, he was able to sufficiently identify the vehicle; however, the trial court did err by not providing the state an opportunity to file a response to defendant's motion to suppress; remanded.

Impaired driving. State v. Love | 2022-Ohio-1454 | 7th Appellate District | 3/28/22 Conviction of OVI, R.C. 4511.19(A)(1)(a), was not supported by sufficient evidence where, although appellant showed signs of impairment, there was no evidence to show what specific drug had been ingested and

Traffic and OVI (Cont.)

whether that drug was a drug of abuse, and appellant's vague admissions to use of an unspecified drug do not constitute evidence that she took a drug of abuse or was under the influence of a drug of abuse, and the state failed to obtain a chemical test to demonstrate her impairment was caused by a specific drug of abuse.

Impaired driving. State v. McLaughlin | 2022-Ohio-1227 | 5th Appellate District | 4/12/22 In a conviction by plea of, inter alia, two counts of OVI, R.C. 4511.19, denial of motion to suppress was not error since officer had a reasonable, articulable suspicion to make a traffic stop where, after receiving a call from dispatch of an unidentified citizen's report of a person who entered a car exhibiting signs of intoxication, officer observed the identified vehicle and that it was weaving within a marked lane in violation of municipal ordinance.

Driving violations. State v. Lyles | 2022-Ohio-1414 | 1st Appellate District | 4/29/22 In a conviction by plea of misdemeanor driving under suspension and bench conviction of misdemeanor assured distance and misdemeanor hit-skip violation, the trial court erred in accepting plea of driving under suspension since acceptance of plea violated Traf.R. 10(D) because the trial judge did not inform defendant of the effect of his plea; however, defendant's confession of assured clear distance and that he fled the accident did not violate the corpus deliciti rule where his license plate was found after the accident lodged in the car that had been in front of him; driving under suspension conviction is vacated and cause is remanded for further proceedings.

Workers' Compenstation

Average weekly wage. State ex rel. Huntington Bancshares Inc. v. Berry | 2022-Ohio-531 | 10th Appellate District | 2/24/22 Petition for writ of mandamus to compel industrial commission to vacate order setting average weekly wage for injured employee is denied where wage was calculated using the R.C. 4123.61 special circumstances exception for unemployment by including in the calculation only the weeks that employee was employed by relator and excluding weeks employee was unemployed, and the standard formula for calculating average weekly wage was found to be unjust and unrepresentative of future wages lost as the result of industrial injury.

Hearing/Notice. State ex rel. Group Mgt. Servs., Inc. v. Indus. Comm. | 2022-Ohio-906 | 10th Appellate District | 3/22/22 Employer's petition for a writ of mandamus to compel industrial commission to vacate its decision granting a new hearing to employee on workers' compensation claim because employee had not received notice of first hearing is denied where employee had moved and did not receive notices or have actual notice of their contents, he attempted to forward mail but was unable to do so, he verbally informed employer of his new address, and commission had discretion to grant a new hearing in order to consider employee's claim on adjudicated merits rather than by default, R.C. 4123.522.

Jurisdiction/Extent of injury. Pulaski v. Bur. of Workers' Comp. | 2022-Ohio-1344 | 2nd Appellate District | 4/22/22 In employee's action seeking continuation of workers' compensation benefits when an accident at home re-injured his earlier workplace injury, trial court did not err in granting employer's motion to dismiss since the commission's order involved the extent of injury, so the court lacked subject-matter jurisdiction pursuant to R.C. 4123.512; the trial court would have jurisdiction if the appeal concerned the right to participate in the fund, rather than the extent of injury, and although the new injury broke the chain of causation, the commission did not find that the break forever ended its responsibility for employee's claim, and therefore the employee could not argue that he was denied the right to participate in the fund.