



Ohio caselaw summaries from September 1 – November 15

In Case You Missed It – The following are summaries of cases decided by Ohio courts between September 1 – November 15, 2020. To read the decisions in their entirety, please visit ebar.ohioabar.org and enter the case name in the “keyword” search field.

Administrative Law

Mediation. [State ex rel. Figueroa v. Ohio Dept. of Commerce, Div. of Real Estate & Professional Licensing, 2020-Ohio-4275 | Supreme Court of Ohio | 9/3/20](#) Denial of petition for writ of mandamus to compel state department division to hold informal mediation for a complaint filed against petitioner regarding his mortgage application is affirmed where petitioner failed to file objections to magistrate’s decision and did not specify anything rising to the level of plain error on appeal, and petitioner’s argument also fails on the merits because the duty to hold a mediation meeting under R.C. 4735.051(B) requires that both parties file mediation requests within the timeframe established by R.C. 4735.051(A).

Evidence. [Barr v. Lorain Cty. Dept. of Job & Family Servs., 2020-Ohio-4344 | 9th Appellate District | 9/8/20](#) In public employee’s challenge to imposition of fine, trial court did not err in affirming board’s decision that relied on an unsworn recorded statement of employee’s co-worker since the statement was recorded at a pre-disciplinary conference at which co-worker was subject to questioning by employee’s counsel and the board may permit the introduction of evidence otherwise excludable as hearsay, Ohio Adm. Code 124-9-02.

License renewal. [Menkes v. State Med. Bd. of Ohio, 2020-Ohio-4656 | 10th Appellate District | 9/29/20](#) In physician’s application to renew medical license, trial court erred in reversing state medical board’s order reprimanding physician for violation of R.C. 4731.22(B)(5) since physician failed to list a limited license in another state on his application even though he had recently attempted to remove the limitation, he executed the affidavit averring all statements in application were true, and evidence was established that he had recently communicated with other state licensing agencies about his limited license prior to applying for license in Ohio.

Civil speed enforcement. [Borrow v. New Miami, 2020-Ohio-4873 | 12th Appellate District | 10/13/20](#) In suit by motorists who were sent notices of liability pursuant to city’s automatic speed enforcement system where motorists asserted violation of due process and sought class action certification, summary judgment in favor of motorists is reversed since it was not error to admit hearsay evidence because administrative hearings concerning citations issued by the speed enforcement system are not governed by the rules for criminal proceedings, and also a vehicle owner subject to citation could make an administrative appeal under R.C. 2506.03.

Dispensary application. [Buckeye Relief, L.L.C. v. Ohio Pharmacy Bd., 2020-Ohio-4916 | 8th Appellate District | 10/15/20](#) In drug dispensary’s action seeking licenses to open three medical marijuana dispensaries, trial court erred in affirming state pharmacy board’s rejection of two of dispensary’s applications where dispensary was given a low score on the capital-commitment question because the evaluator may not have understood that put options, which allow bond holders the right to redeem the principal of a bond at any time before the bond matures, met the liquidity definition, and the failure to correct the erroneous scores under the board’s criteria equates to legal error.

Jurisdiction. [State ex rel. Lanter v. Cincinnati, 2020-Ohio-4973 | 1st Appellate District | 10/21/20](#) In police officer’s appeal of citizen complaint authority’s report sustaining a charge of race discrimination against him, trial court lacked jurisdiction to overturn the authority’s report, determining that the authority’s findings were not supported by a preponderance of substantial evidence, since the authority’s report did not constitute a quasi-judicial proceeding where there was no requirement for notice, hearing and the opportunity for introduction of evidence, R.C. 2506.01(A).

Appeal. [Guru Pramukh Swami, Inc. v. Ohio Lottery Comm., 2020-Ohio-5137 | 3rd Appellate District | 11/2/20](#) In administrative appeal of revocation of appellant’s lottery sales agent licenses for alleged violations of R.C. 3770.05(C)(4), trial court did not err in remanding the matter to state lottery commission and in allowing it to issue a second order where, although R.C. 119.12(N) does not specifically give trial court authority to remand an appeal to an administrative agency, the specified power to reverse and vacate decisions necessarily includes the power to remand the cause to the decision maker.

Civil service employees. [Binder v. Cuyahoga Cty., 2020-Ohio-5126 | Supreme Court of Ohio | 11/4/20](#) In county employees’ action for declaratory relief and damages, asserting that the county had reduced their compensation in violation of R.C. 124.34, it was error to certify a class since complaints did not state a cause of action for which relief may be granted where R.C. 124.34 provides for aggrieved employees to file an appeal with the personnel board of review or their local civil service commission but does not allow a civil service employee to file an action in common pleas court to vindicate alleged violations of the statute.

Banking and Finance

Credit card debt. [Am. Express Natl. Bank v. Bush, 2020-Ohio-4424 | 11th Appellate District | 9/14/20](#) In bank’s action against cardholder for defaulting on credit card obligations, resulting in judgment for the bank, the trial court did not err in denying the cardholder’s motion for relief from judgment where the cardmember agreement and account statements admitted into evidence showed that there was a binding agreement between the parties even in the absence of a signed agreement, and check payments to the account endorsed by cardholder are probative of her acquiescence to the cardmember agreement.

Cognovit note. [Sutton Bank v. Progressive Polymers, L.L.C., 2020-Ohio-5101 | Supreme Court of Ohio | 11/3/20](#) In bank’s complaint for a cognovit judgment against borrowers alleging default and resulting in trial court’s judgment for bank, court of appeals’ reversal on reasoning that bank’s wording in drafting the note was insufficient to direct a statutory warning to the borrowers was error since the contract, viewed as a whole, put the debtors on notice of the rights that they were relinquishing by signing the note, R.C. 2323.12 and 2323.13.

Business Law

Account. [Lakeview Elec., Inc. v. Van Auken, 2020-Ohio-4941 | 6th Appellate District | 10/16/20](#) In complaint by plaintiff-electrical contractor seeking to collect on two accounts for goods and services sold to defendants, summary judgment for plaintiff was error since invoices presented by plaintiff did not include beginning balances, dated items, or any way to determine whether defendants received the goods and services on the invoices or when defendants made a payment, and invoices do not meet requirements for an account.

Fiduciary duty. [Maas v. Maas, 2020-Ohio-5160 | 1st Appellate District | 11/4/20](#) In plaintiff’s action for breach of fiduciary duty against his brothers and other outside directors of family business arising from disagreements over business expansion, charitable giving programs and alleged gross mismanagement by one brother, summary judgment in favor of defendants was not error since the company’s failure to meet short-term profitability goals did not rise to the level of breach of fiduciary duty, plaintiff’s evidence consisted of personal opinions and conclusions, and the court properly applied the business-judgment rule, R.C. 1701.59(F).

Construction Law

Contract. Premier Const. Co., Inc. v. Maple Glen Apts. & Townhomes, Ltd., 2020-Ohio-4779 | 12th Appellate District | 10/5/20 In plaintiff-construction company's breach of contract and mechanic's lien foreclosure action against defendants-apartment owners for defendants' failure to pay for materials delivered to construction site, trial court erred in ruling that the parties did not enter into a valid contract where, although written estimate did not specify the quantity for any materials, the quantity is readily discerned from the estimate, and the agreement does not fail under the UCC because any ambiguities could be resolved by the blueprints, R.C. 1302.07 and 1302.55(A).

Judgment. Zerger v. Schafer, 2020-Ohio-4817 | 7th Appellate District | 9/28/20 In action by contractor to recover money for materials and costs associated with construction of a pool deck, default judgment for contractor is affirmed where homeowner was properly served with contractor's complaint but failed to respond or in any other manner to appear in the action; the court erred in granting attorney fees to contractor since there was no evidence of bad faith on the part of the homeowner and no justification to deviate from the American Rule.

Fraudulent transfer. Hanamura-Valashinas v. Transitions by Firenza, L.L.C., 2020-Ohio-4887 | 11th Appellate District | 10/13/20 In plaintiffs-homeowners' breach of contract action against defendants-construction company and individuals, trial court did not err in awarding plaintiffs damages for fraudulent transfer where defendants transferred assets to their LLC from their corporation, which had entered into a construction agreement with plaintiffs, and under the Uniform Fraudulent Transfer Act, the LLC-transferee is not required to also be a debtor, so judgment was consistent with a valid claim under the Act, R.C. 1336.04(A).

Fraud. Hanamura-Valashinas v. Transitions by Firenza, L.L.C., 2020-Ohio-4888 | 11th Appellate District | 10/13/20 In plaintiffs-homeowners' fraud and breach of contract action against defendants-construction company and individuals, trial court erred in granting summary judgment in favor of defendants on fraud claim where defendant-managing partner falsified invoices before presenting them to plaintiffs for payment, so defendants violated a duty independent of the construction agreement and provided grounds for fraud claim, which was improperly dismissed prior to trial.

Consumer Law

Arbitration. Norman v. Kellie Auto Sales, Inc., 2020-Ohio-4311 | 10th Appellate District | 9/3/20 In dispute about purchase of a vehicle in which the trial court confirmed the arbitrator's damages and attorney fee award to the buyer on reasoning that the seller violated the Consumer Sales Practices Act, with judgment subsequently appealed and remanded for modification, the buyer's application for reconsideration is granted since a request for modification was based on the seller's exercise of the R.C. 1345.092 right to cure and, because the cure offer was made after the arbitrator's powers expired, it did not meet grounds for vacation or modification pursuant to R.C. 2711.10 or 2711.11.

Consumer Sales Practices Act. Barlow v. Gap, Inc., 2020-Ohio-4382 | 8th Appellate District | 9/10/20 In complaint against clothing retailer by consumer alleging violation of the Consumer Sales Practices Act by posting signs outside stores that did not clearly and conspicuously state exclusions to sales promotions, summary judgment for retailer was not error where consumer failed to allege, argue or present evidence that the signs were false, material or misleading.

Deceptive acts. Jones v. J. Duran, Inc., 2020-Ohio-4606 | 6th Appellate District | 9/25/20 In action asserting violation of Ohio Consumer Sales Practices Act where consumer attempted to rescind sale of vehicle sold by dealership, summary judgment for dealership was error since genuine issues of material fact existed as to dealership's knowledge and representation of the vehicle's history, and trial court acted as the trier of fact in evaluating the reasonableness of consumer's actions.

Unauthorized services. Nieman v. Tucker, 2020-Ohio-4704 | 6th Appellate District | 9/30/20 In plaintiffs-property owners' consumer action against defendant-landscaping company for charging plaintiffs for unauthorized services and for placing mechanics lien on the property where third-party-purported buyer of plaintiffs' property requested the services and plaintiffs made payment to avoid losing the potential sale, it was not error to rule for plaintiffs on reasoning that defendant refused to withdraw charges for unauthorized services and to remove mechanic's lien before receiving payment for those unauthorized services.

Contracts

Breach. Blue v. McGuire, 2020-Ohio-4292 | 8th Appellate District | 9/3/20 In plaintiff's breach of contract action against county agency employees apparently in a roundabout attempt to challenge a child support order, trial court did not err in granting defendants' motion to dismiss where there is no evidence the defendants were parties to a contract and, even if there were a binding contract, plaintiff is unable to establish that defendants were in breach.

Unauthorized practice of law. Shertok v. Wallace Group Gen. Dentistry For Today, Inc., 2020-Ohio-4369 | 1st Appellate District | 9/9/20 In breach of contract and related claims action by plaintiff-dentist who attempted to purchase defendant-dental practice from defendant-deceased dentist's wife, who filed motion to dismiss on behalf of dental practice, trial court did not err in determining that plaintiff's attempt to amend complaint to add unauthorized-practice-of-law claim constituted frivolous conduct since that claim was not warranted under existing law and could not be supported by a good faith argument for establishment of new law, R.C. 2323.51(A)(2)(a)(ii).

Breach. XPX Armor & Equip., Inc. v. SkyLIFE Co., Inc., 2020-Ohio-4498 | 6th Appellate District | 9/18/20 In breach of contract action involving the issue of whether parachutes manufactured by plaintiff met the standards required by the parties' supply agreement, trial court did not err in finding that the agreement was an enforceable contract between the parties but did err in granting summary judgment to defendant where the agreement contained various ambiguities that could only be resolved

with extrinsic evidence, and the extrinsic evidence created questions of fact, precluding summary judgment.

Mechanic's lien. BND Rentals, Inc. v. Dayton Power & Light Co., 2020-Ohio-4484 | 2nd Appellate District | 9/18/20 In complaint by plaintiff-equipment rental company seeking judgment against bond posted by defendant-property owner utility at whose plant equipment rented from plaintiff was used, trial court erred in concluding that plaintiff was required to have a contractual relationship with defendant to recover under mechanic's lien statutes since the application of R.C. 1311.02 is not restricted to those with a direct contractual relationship with an owner.

Arbitration. Klonowski v. Merrill Lynch, 2020-Ohio-4567 | 8th Appellate District | 9/24/20 In plaintiff's action for breach of contract and related claims asserting that defendants mismanaged his cash management account, trial court erred in denying defendants' motion to compel arbitration and stay the proceedings since client relationship agreement contained two provisions relating to arbitration, court made no finding regarding procedural unconscionability and plaintiff failed to present evidence that the terms in the agreement were commercially unreasonable, constituting substantive unconscionability, Taylor.

Settlement agreement. Muransky v. Miller, 2020-Ohio-4595 | 2nd Appellate District | 9/25/20 In action to enforce formal settlement agreement between plaintiff-vehicle owner and defendants-vehicle customization business and its owner, trial court did not err in finding that defendants had performed their duties under the agreement where evidence showed that plaintiff impliedly waived time requirement by not objecting to delays in completing vehicle beyond the first written extension and competent, credible evidence showed that defendants substantially completed the required work as to each defect alleged by plaintiff.

Interest. Designers Choice, Inc. v. Attractive Floorings, L.L.C., 2020-Ohio-4617 | 9th Appellate District | 9/28/20 In action filed by plaintiff-flooring business for breach of contract against defendant-purchaser of plaintiff's business for failure to pay balance owed, trial court erred in declining to award pre- and post-judgment interest on damages awarded to plaintiff where, although the promissory note specified that no interest would accrue on initial balance, the agreement and note did not provide a rate of interest on money due and payable, and therefore plaintiff was entitled to pre- and post-judgment interest at statutory rate, R.C. 1343.03(A).

Breach. Sabath v. Sabath, 2020-Ohio-4638 | 11th Appellate District | 9/28/20 In father's action against son for breach of purchase agreement for sale of company, resulting in a directed verdict for father on unjust enrichment counterclaim, trial court did not err in denying son's motion for JNOV since evidence supported the claim that required payments were not made under the purchase agreement, and amounts son paid for father's vehicle and credit card bills were not part of the purchase agreement; also, video testimony of son's attorney was incorrectly excluded but did not result in material prejudice, Civ.R. 32(A)(3).

Tortious interference. APCO Industries, Inc. v. Braun Constr. Group, Inc., 2020-Ohio-4762 | 10th Appellate District | 10/1/20 In lenders' foreclosure action on construction loan in which contractor counterclaimed for payment for unpaid work, alleging tortious interference with contracts, trial court erred in granting summary judgment to lenders on reasoning that they established that their refusal to disburse loan proceeds was justified where borrower admitted that events of default occurred under the construction loan agreement but the record does not conclusively disclose what facts precipitated those events of default nor when those events of default occurred, and those questions remained unresolved.

Pleading. Ri'chard v. Bank of Am., 2020-Ohio-4688 | 1st Appellate District | 10/1/20 Dismissal of plaintiff-vehicle owner's breach of contract action against defendant-bank for failure to state a claim was error since complaint met the requirements for pleading a breach of contract action where plaintiff claimed the existence of a binding contract, performance by plaintiff, breach by defendant, and damages resulting from the breach, Civ.R. 8(A) and 12(B)(6).

Reconsideration. Snyder v. Lawrence, 2020-Ohio-4731 | 7th Appellate District | 9/25/20 In breach of contract action in which appellant filed an application for reconsideration, claiming that the court improperly considered certain evidence in the record to conclude that no implied-in-fact contract existed between the parties, application is denied because the evidence considered involved the circumstances surrounding the parties' transaction, App.R. 26.

Statute of frauds. Gallagher v. Cochran, 2020-Ohio-4917 | 8th Appellate District | 10/15/20 In plaintiff's breach of contract action to recover money loaned to a company later purchased by defendant, summary judgment in favor of defendant was error since the statute of frauds does not apply because plaintiff claims that defendant promised him an equity stake in the company or employment, rather than a direct payment, to reimburse him for his debts, and it is possible for an equity stake to be given to a person or to reach the required value in less than a year, and a period of employment can be completed within a year, R.C. 1335.05.

Arbitration. Debois, Inc. v. Guy, 2020-Ohio-4989 | 8th Appellate District | 10/22/20 In plaintiff-car dealership's action against defendant-purchaser of car to recover alleged unpaid car payments, prompting defendant to file answer and counterclaim that asserted class action allegations, trial court did not err in denying plaintiff's motion for a stay pending arbitration on reasoning that plaintiff's participation in the litigation was inconsistent with the right to arbitrate and demonstrated a waiver of the right and also that purchase contract's arbitration agreement appears to exclude class actions from being arbitrated, or at best is ambiguous.

Parol evidence. Patel v. Strategic Group, L.L.C., 2020-Ohio-4990 | 8th Appellate District | 10/22/20 In breach of contract and related claims action by plaintiff to recover earnest money paid for property purchase that plaintiff withdrew from on allegation that defendant misinformed him about expiration of underlying lease, judgment for plaintiff is affirmed where

trial court found the terms of the purchase agreement to be ambiguous and considered parol evidence to establish what the parties mutually agreed to and understood to be the meaning of a contract rider.

Interest. Tidewater Fin. Co. v. Smith, 2020-Ohio-5042 | 6th Appellate District | 10/23/20 In plaintiff-financial company's action against defendant for amount owed on contract for vehicle purchase, trial court did not err in reversing magistrate's order that the garnishment be released and in reinstating the garnishment since magistrate's order did not take into consideration interest at the agreed rate, which continued to accrue until the balance was paid in full.

Settlement agreement. Aceste v. Stryker Corp., 2020-Ohio-4938 | 6th Appellate District | 10/16/20 In plaintiffs' action for compensatory damages related to medical problems and loss of consortium, trial court erred in granting defendants' motion to enforce settlement agreement since the record does not establish a valid offer and acceptance and there is no evidence of the terms of a settlement agreement; defendants' claims that plaintiffs' words, deeds and acts demonstrated a meeting of the minds as to the essential terms of a settlement agreement and that plaintiff signed a form titled "Informed Consent Acknowledgment and Consent to Settle" were insufficient to establish agreement.

Release. Owens v. Bridgestone, 2020-Ohio-5156 | 10th Appellate District | 11/3/20 In spoliation of evidence claim by employee who had been injured in an industrial accident and had earlier resolved his claim for violation of specific safety requirements pursuant to a settlement agreement that included a release, trial court did not err in granting employer's motion for summary judgment since the language of the release clearly and unambiguously included the claim for spoliation of evidence where it covered any and all other claims between the parties, including future claims, and did not specifically exclude any type of claim.

Settlement agreement. Feight v. Brooks, 2020-Ohio-5205 | 2nd Appellate District | 11/6/20 In plaintiff's action arising from traffic accident where the parties entered into a settlement agreement which plaintiff attempted to rescind, trial court erred in holding that the agreement was enforceable since some of the material terms of the agreement were ambiguous and trial court did not resolve the threshold question of whether the parties to the agreement achieved a meeting of the minds.

Criminal Law

Jail-time credit. State v. Reed, 2020-Ohio-4255 | Supreme Court of Ohio | 9/1/20 Jail-time credit on a prison sentence is not warranted under R.C. 2967.191(A) for the days a defendant is on post-conviction house arrest and post-conviction electronic monitoring imposed for violating community-control sanctions, but only for those days in which a defendant is confined in a public or private facility.

Mistrial. State v. Setty, 2020-Ohio-4318 | 4th Appellate District | 9/1/20 In conviction of OVI, denial of defendant's motion for mistrial was not error where the trial court excused a juror and replaced him with an alternate after the jury heard the defendant's derogatory statements about the police chief and the juror's mother on the body camera footage and was shown to the jury where the defendant invited any error since a video was jointly submitted as evidence, and trial judge found that the remaining jurors could continue to be fair and impartial.

Reopening. State v. Palmer-Tesema, 2020-Ohio-4291 | 8th Appellate District | 9/1/20 Application to re-open appeal, App.R. 26(B), is denied where claims of ineffective assistance of counsel in not challenging sufficiency and weight of evidence based on appellant's knowledge of substantial incapacity of victim because of victim's voluntary intoxication and sleep is without merit based on testimony of witnesses, and a claim of failure to raise ineffective assistance of trial counsel cannot be considered since the argument depends on evidence of matters outside of record.

Evidence. State v. Stites, 2020-Ohio-4281 | 1st Appellate District | 9/2/20 In conviction of sex offenses involving defendant's young children and step-children, trial court erred in admission of testimony of a school counselor of one victim, a victim's boyfriend, and the biological parents of two victims about statements the victims made to them about the defendant since the statements constituted impermissible hearsay, but errors were harmless where the victims all testified in detail about the sexual abuse inflicted by the defendant.

Telecommunications harassment. State v. Powell, 2020-Ohio-4283 | 1st Appellate District | 9/2/20 Bench conviction of telecommunications harassment, R.C. 2917.21(B)(1), met the sufficiency and weight of evidence standards where, despite defendant's claim that her purpose in calling and texting the recipient was to have him to be a part of their child's life, the acerbic and taunting tone of her communications over a two-day period demonstrated her purpose to harass since the recipient clearly indicated that he wanted no contact with her.

Contempt. In re Statman, 2020-Ohio-4285 | 1st Appellate District | 9/2/20 In a combined appeal in two cases of attorneys convicted of indirect contempt, the trial court erred since there is no vicarious liability for a trial attorney regarding the alleged contemptuous conduct of a non-lawyer in appellants' affiliated law firm where there was no evidence that the appellants ratified the non-lawyer's conduct or that they did any affirmative act in violation of the court order that would have justified a finding of contempt, R.C. 2705.02.

Mandamus. State ex rel. Hill v. Navarre, 2020-Ohio-4274 | Supreme Court of Ohio | 9/3/20 In inmate's pro se mandamus action to compel the trial court to re-sentence him for failure of the court in an underlying criminal action to properly notify him of his appeal rights or of post-release control at a prior re-sentencing hearing, the court of appeals did not err in denying a writ where the relator had an adequate remedy at law by way of appeal; the relator was declared a vexatious litigator, S.Ct.Prac.R. 4.03(B).

Verdict. State v. Hollins, 2020-Ohio-4290 | 8th Appellate District | 9/3/20 In conviction of, inter alia, aggravated murder, the claim that the jury verdict acquitting the defendant of an attendant firearm specification resulted in inconsistent verdicts is without merit since it was entirely consistent for the jury to conclude both that the defendant aided and abetted in the murder, but did not personally possess the firearms that were used to murder the victim.

Fifth Amendment. State v. Cooper, 2020-Ohio-4293 | 8th Appellate District | 9/3/20 In conviction of, inter alia, attempted murder, trial court did not err in admitting the testimony of an officer that he met with the defendant, but that the defendant did not give a statement since it did not violate the Fifth Amendment where the state did not use the officer's comment as substantive evidence, but rather a single comment about the detective's course of investigation, Rosa.

Limitations. Cleveland v. Bermudez, 2020-Ohio-4296 | 8th Appellate District | 9/3/20 In conviction of domestic violence and assault, the trial court erred in the summary denial of the defendant's motion to dismiss for failure to prosecute within the statute of limitations where the court failed to hold a hearing on whether the city exercised reasonable diligence in executing a registered warrant, whether the defendant's relocation was to purposely avoid prosecution and whether he could present evidence to rebut any presumption that his relocation was to purposely avoid prosecution, Loc.R. 7.02.

Plea. State v. Pippen, 2020-Ohio-4297 | 8th Appellate District | 9/3/20 In conviction by plea of sex offenses, the trial court substantially complied with Crim.R. 11(C)(2)(a), even though it did not specifically advise the defendant that prison was mandatory or that he was ineligible for community control sanctions where the record reflects that the defendant was subjectively aware he would be sentenced to mandatory prison time.

Domestic violence. State v. Ford, 2020-Ohio-4298 | 8th Appellate District | 9/3/20 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where the defendant caused physical harm by striking his 17 year-old stepdaughter with a belt that left visible bruises and his conduct did not constitute proper and reasonable parental discipline, an affirmative defense since his conduct also included pushing her to the floor, holding her down with his knee on her neck and then slamming her into a wall.

Plea withdrawal. State v. Resto, 2020-Ohio-4299 | 8th Appellate District | 9/3/20 In conviction by plea of menacing by stalking, denial of an untimely pre-sentence motion to withdraw the plea was not error where the defendant's claims of his nonviolent nature and the stress he endured from the pending cases did not evidence his innocence or support a reasonable or legitimate basis for withdrawal, but rather demonstrated a change of heart.

Plea withdrawal. State v. Undiandeye, 2020-Ohio-4301 | 8th Appellate District | 9/3/20 In conviction by plea of, inter alia, drug offenses, denial of pre-sentence motion to withdraw

plea was not error where the defendant was represented by competent counsel, resulting in a successfully negotiated plea agreement, the defendant was given a full Crim.R. 11 hearing and gave no reason why the motion should be granted other than a change of heart and the claim of innocence.

Reconsideration. State v. Conner, 2020-Ohio-4310 | 8th Appellate District | 9/3/20 Application for reconsideration, App.R. 26(B), of dismissal of defendant's appeal for lack of a final appealable order based on the trial court's failure to include in its entry any explanation for the denial of the defendant's application for DNA testing is granted, Dinkelacker, and the trial court's summary dismissal failed to provide reasons for its denial of the DNA application, constituting an abuse of discretion.

Jail-time credit. State v. Harris, 2020-Ohio-4303 | 8th Appellate District | 9/3/20 Following bindover of juvenile and plea of attempted aggravated robbery and a firearm specification, denial of motion for recalculation of jail-time credit was error where the defendant's confinement in a prior dismissed juvenile action involved the same incident and the same allegedly delinquent acts for which he was charged in the subsequent action in an identical complaint; remanded for a hearing for a determination of whether time spent in a juvenile facility constituted confinement.

Evidence. State v. Kanable, 2020-Ohio-4335 | 6th Appellate District | 9/4/20 In conviction of theft, the trial court did not err by admitting an officer's testimony concerning the identity of the defendant as the person who was involved in a similar crime at another store since evidence of another crime unrelated to the offense for which the offender is on trial is admissible to establish the offender's identity as the perpetrator of the charged crime, Evid.R. 404(B), and was not outweighed by the danger of unfair prejudice, Evid.R. 403.

Plea. State v. Tharp, 2020-Ohio-4329 | 2nd Appellate District | 9/4/20 In a conviction by plea of third-degree misdemeanor littering, a no contest plea was validly made since the defendant's claim that he did not know his driver's license could be subject to a warrant block if he did not timely pay the fines and costs or that the court could impose probation is without merit where the court informed him of the appropriate language in Crim.R. 11(B)(2) before his plea was entered and the court was not required to inform him of the possible penalty, Crim.R. 11(E).

Self-defense. State v. Schooler, 2020-Ohio-4327 | 2nd Appellate District | 9/4/20 In a bench conviction of misdemeanor assault, the trial court did not err by not finding that the defendant acted in self-defense when she sprayed the victim with mace or pepper spray where a witness to the encounter testified that the defendant and victim were several feet apart and that the defendant, without any preceding threats from the victim, sprayed the victim in the face, and the trial court, as trier of fact, did not abuse its discretion in crediting the third-party's testimony.

Intervention in lieu of conviction. State v. Wells, 2020-Ohio-4331 | 2nd Appellate District | 9/4/20 In a conviction by plea of felony drug

offenses following the revocation of intervention in lieu of conviction (ILC) for failure to satisfy ILC conditions, the trial court did not err in revoking ILC where the defendant's violations of ILC occurred prior to the termination date of the ILC since the court did not lose jurisdiction to enter a finding of guilt on the guilty plea after the ILC period expired by examining the offender's conduct during the ILC period.

Ineffective assistance. State v. Layson, 2020-Ohio-4336 | 6th Appellate District | 9/4/20 In a conviction by plea of insurance fraud and subsequent violation of community control and extension of control with additional requirements, the claim of ineffective assistance of counsel at the violation hearing is without merit where the record does not demonstrate deficient performance since the appellant failed to provide clean drug tests and counsel chose to provide reasons for the non-compliance that attempted to put the appellant in the best light possible.

Domestic violence. State v. Myers, 2020-Ohio-4325 | 2nd Appellate District | 9/4/20 A bench conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where the defendant's father testified that the defendant-son pushed him against a wall in his father's home, hit him in the chest and scratched his arms, an officer also testified that the father told him the same thing and saw the scratches on the father's arms and, moreover, it was necessary only to show an attempt to cause harm, and credibility issues were for trier of fact.

Sentencing. State v. Dapice, 2020-Ohio-4324 | 2nd Appellate District | 9/4/20 In conviction by plea of aggravated burglary and failure to comply, claim that imposition of jointly recommended sentence for the aggravated burglary offense failed to comply with the purposes and principles of felony sentencing in R.C. 2929.11 is not reviewable pursuant to R.C. 2953.08(D)(1) since it complies with all mandatory sentencing provisions, including the Reagan Tokes Law.

Evidence. State v. Grimes, 2020-Ohio-4357 | 5th Appellate District | 9/4/20 In conviction of, inter alia, an aggravated vehicular assault arising out of a car chase, the trial court did not commit plain error in admitting the investigating officer's testimony about victims' statements that the defendant claimed was hearsay since the officer's testimony was not offered for the truth of the matter asserted, but to show the path of the investigation and the officer's testimony that victims stated that the defendant was trying to kill them was inadmissible under Evid.R. 803(3), and error was harmless in trial to bench.

Procedendo. State ex rel. Cornely v. McCall, 2020-Ohio-4384 | 8th Appellate District | 9/4/20 In procedendo action to compel the trial judge in underlying criminal action in which relator was convicted of domestic violence to rule on a motion for stay of a no contact order relating to his children, writ is granted since App.R. 8 provides a trial court judge with jurisdiction to rule on the motion, and neither the transfer of jurisdiction principle nor filing an appeal precludes the filing of a procedendo action to compel the trial judge to rule on the motion for stay.

Bond surety. State v. T.G.-B., 2020-Ohio-4343 | 9th Appellate District | 9/8/20 Following failure of bond surety to make payment as ordered after defendant failed to appear, forfeiture of surety bond was error where the trial court did not enter a judgment entry of its order suspending surety from posting bonds in the court's jurisdiction as required by R.C. 2937.36(C), and a letter from the clerk of courts to the bond surety did not constitute a judgment entry.

Evidence. State v. Magee, 2020-Ohio-4351 | 12th Appellate District | 9/8/20 In conviction of, inter alia, aggravated robbery, trial court did not commit structural error by excluding evidence related to defendant's not guilty by reason of insanity plea since the defendant failed to request a jury instruction and failed to present any evidence showing that at the time he committed the offense he suffered from a severe mental disease, Bradford, and the trial court did not preclude the defendant from revisiting the court's grant of state's motion in limine ruling that evidence of defendant's mental state was inadmissible, but defendant did not do so.

Impaired driving. State v. Fitzgerald, 2020-Ohio-4346 | 9th Appellate District | 9/8/20 Following the grant of application to reopen an appeal that affirmed an OVI conviction, the prior decision is vacated and the trial court's judgment is reversed since following a traffic stop for speeding, the officer did not have a reasonable, articulable reason to detain defendant and conduct field sobriety tests where, although the passenger visibly exhibited signs of impairment, the smell of unburnt marijuana and defendant's vague admission of consuming some marijuana earlier in the day was not sufficient to constitute reasonable suspicion.

Jurisdiction. State v. Reynolds, 2020-Ohio-4354 | 12th Appellate District | 9/8/20 Conviction of misdemeanor child endangering and domestic violence are reversed where the county court did not have subject-matter jurisdiction of child endangering charge since R.C. 2151.23 vests exclusive original jurisdiction on juvenile courts, R.C. 2151.23, and the jury waiver was invalid since the trial court proceeded with a bench trial and the waiver did not meet the open-court requirement of R.C. 2945.05, even if the defendant executed the written waiver form.

Drug offenses. State v. Folk, 2020-Ohio-4373 | 5th Appellate District | 9/8/20 Conviction by plea of aggravated drug possession (fentanyl), R.C. 2925.11(A) and (C)(1)(a), and heroin possession, R.C. 2925.11(A) and (C)(6)(a), was not error where, at the time of the offenses, the defendant had residue on a spoon of both heroin and fentanyl that could have occurred from separate use of each drug, rather than a mixture and also, defendant's plea waived those claims.

Plea. State v. Alexander, 2020-Ohio-4364 | 9th Appellate District | 9/9/20 In conviction by plea of felony offenses, plea was invalid where the trial court failed to advise the defendant of the constitutional rights he would be waiving by pleading guilty as required by Crim.R. 11(C)(2)(c).

Sex offense. State v. Harris, 2020-Ohio-4365 | 9th Appellate District | 9/9/20 Conviction of sexual battery was not against the weight of evidence where the victim and a friend who accompanied her to the defendant's residence testified that she was substantially impaired

when the defendant engaged in sexual relations with her since she consumed a substantial amount of alcohol and smoked marijuana, had coordination problems and fell while dancing with defendant that led him to zip tie her legs together and engage in sexual relations with her, R.C. 2907.03(A)(2).

Habeas corpus. Drew v. State ex rel. Neil, 2020-Ohio-4366 | 1st Appellate District | 9/9/20 In a habeas corpus action challenging five-million-dollar bail as excessive in a prosecution of decades old alleged multiple rapes, the court of appeals denies the petition where the petitioner failed to provide the transcript of the trial court hearing evaluating the Crim.R. 46 factors in order to permit the appellate court review, and thus the presumption of regularity of the trial court proceedings must be applied and judgment affirmed since the petitioner did not present any other evidence supporting his claims that he is not a flight risk.

Misconduct at emergency. State v. Green, 2020-Ohio-4370 | 1st Appellate District | 9/9/20 Conviction of misconduct at an emergency, R.C. 2917.13(A)(3), met the sufficiency and weight of evidence standards where, during a countywide snow emergency, the defendant refused to obey officers' order to remove his car from the middle of a roadway and park it in a nearby lot where other drivers had been ordered by police to park their cars in order to protect their own safety and that of the public, and the jury did not lose its way in its credibility determinations.

Plea withdrawal. State v. Dunlap, 2020-Ohio-4375 | 5th Appellate District | 9/9/20 In conviction by plea of drug offenses and imposition of a mandatory eight-year prison term, denial of post-sentencing motion to withdraw the plea was not error since the state's disclosure of relevant factual information or efforts to correct misstatements concerning the validity of the defendant's assertion at sentencing hearing that he assisted law enforcement after his arrest did not violate the plea agreement provision that the state would not take a position on sentence.

Prosecutorial misconduct. State v. Spiess, 2020-Ohio-4376 | 5th Appellate District | 9/9/20 In conviction of domestic violence and assault arising out of officer's observations of the defendant's actions at a truck stop toward a companion who had been driving, the prosecutor did not engage in misconduct by asking the defendant on cross-exam whether he and his companion had discussed the case with his attorney where they testified differently about whether the defendant lifted his companion off the ground after they exited the car and, moreover, the state presented compelling evidence by the officer who viewed the encounter between the parties.

Sentencing. State v. Hawk, 2020-Ohio-4385 | 5th Appellate District | 9/9/20 Following a conviction by plea of OVI and a drug offense and subsequent imprisonment for alleged violation of community control, the trial court committed plain error by subsequently modifying the original community control imposed to require the appellant to undergo inpatient drug treatment, even though he had not violated the original community control since R.C. 2929.15(B)(1) did not authorize the additional sanctions and double jeopardy restrictions prevent a trial court from modifying a sentence after the sentence has commenced.

Sentencing. State v. Shaffer, 2020-Ohio-4386 | 5th Appellate District | 9/9/20 Following multiple convictions by plea over several years for robbery and drug offenses, denials of identical pro se motions to vacate post-release control as void were not error since sentencing errors in the imposition of post-release control render a sentence voidable, not void, and the sentence may be set aside only if successfully challenged on direct appeal, Harper.

Unauthorized use of vehicle. State v. Cowart, 2020-Ohio-4381 | 8th Appellate District | 9/10/20 Conviction of unauthorized use of a vehicle, R.C. 2913.03, arising out of failure to return a rental car, was supported by sufficient evidence where it was uncontroverted that the defendant knew the vehicle was overdue, but she did not make any additional payments, she did not return the vehicle and continued to possess the rental vehicle at least 48 hours after consent was revoked, which was when the approved rental period ceased, and she stopped making payments.

Driving privileges. State v. Hyde, 2020-Ohio-4383 | 8th Appellate District | 9/10/20 Following a 1988 conviction of aggravated vehicular homicide and imposition of lifetime suspension of driving privileges that was modified in 2017 to allow limited driving privileges for occupational, medical and church purposes, denial of a motion to terminate the suspension without a hearing was not error in view of the serious nature of the offense that triggered the suspension and R.C. 4510.54(B) grants the court discretion to deny the motion without a hearing and it is not required to set forth any reasons, Bullington.

Murder. State v. Daley, 2020-Ohio-4390 | 10th Appellate District | 9/10/20 Conviction of murder, R.C. 2903.02(B), and kidnapping, R.C. 2905.01(A)(2), met the sufficiency and weight of evidence standards where eyewitnesses' accounts of the murder at the victim's residence provided the jury with overwhelming evidence to both satisfy the elements of the offenses for which the jury found appellant guilty and disprove appellant's self-defense claim by establishing him as the aggressor, and jury did not lose its way in making its credibility determinations.

Evidence. State v. Stapleton, 2020-Ohio-4479 | 4th Appellate District | 9/10/20 In conviction of illegal use of a minor offenses and pandering obscenity involving a minor offenses, admission of detective's testimony based on cell phone extractions, text messages and information obtained from Facebook was not plain error since none of the records that contain defendant's own statements are hearsay under Evid.R. 801(D)(2)(a), nor were the victim's electronic messages or images hearsay where defendant solicited the messages and they were extracted from his phone.

Domestic violence. State v. Hudson, 2020-Ohio-4398 | 2nd Appellate District | 9/11/20 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where the victim-mother testified that the defendant-son struck her following an argument, and officers noticed victim's left eye and forehead were bruised, providing sufficient evidence of each of the elements of domestic violence, notwithstanding testimony of a person who was present at one point during the encounter that defendant did not strike victim, and the jury did not lose its way in making its credibility determinations.

Menacing. State v. Body, 2020-Ohio-4397 | 2nd Appellate District | 9/11/20 Bench conviction of menacing was not against the weight of evidence since the trial court did not lose its way in making its credibility determinations of the witnesses in view of the conflicting testimony where the defendant encountered the victim late at night in the victim's apartment parking lot that was not where the defendant resided and threatened her with physical harm because of the victim's relationship with a person who was in a relationship with the defendant.

Plea. State v. Batdorf, 2020-Ohio-4395 | 2nd Appellate District | 9/11/20 In consolidated appeals of convictions by pleas of drug offenses, pleas were validly entered where the defense counsel did not provide ineffective assistance about the effect of the plea on the possible sentences, and the Crim.R. 11 plea colloquy was not deficient since the defendant answered affirmatively to the judge that she was satisfied with counsel's representation, and Crim.R. 11(C)(2) does not require the court to advise the defendant how a possible reversal in one appeal may affect an appeal in a separate case.

Drug offenses. State v. Batdorf, 2020-Ohio-4396 | 2nd Appellate District | 9/11/20 Conviction by plea of aggravated trafficking in drugs, R.C. 2925.03(A)(2), met the sufficiency and weight of evidence standards where the drug-related items were found in close proximity to the defendant-passenger in a motor vehicle, and the separation and packaging of the significant amount of drugs supported the inference that the defendant intended to sell the contraband.

Plea withdrawal. State v. Davis, 2020-Ohio-4539 | 6th Appellate District | 9/11/20 In conviction by plea of drug and weapons offenses, denial of post-sentencing motion to withdraw plea was not error since res judicata applies to a post-sentencing motion to withdraw a guilty plea filed after the time for the filing of a direct appeal and an action for post-conviction relief.

Plea. State v. Monroe, 2020-Ohio-4541 | 6th Appellate District | 9/11/20 In conviction by plea of attempted felonious assault, claim that state violated plea agreement by commenting at sentencing is without merit since defendant's failure to appear at the original sentencing hearing was a breach of the plea agreement and, moreover, state only agreed not to make a recommendation concerning the sentence, and thus state could provide relevant factual information and correct misstatements.

Rape. State v. Dade, 2020-Ohio-4545 | 6th Appellate District | 9/11/20 Conviction of rape of a child under age 13, R.C. 2907.02(A)(1)(b) and (B), met the sufficiency and weight of evidence standards where victim's testimony provided sufficient evidence of rape, and state was not obligated to present physical or scientific evidence of the offense, and jury did not clearly lose its way in making its credibility determinations.

Plea. State v. Gilbert, 2020-Ohio-4537 | 6th Appellate District | 9/11/20 On remand from the Ohio Supreme Court, in conviction by plea of pandering obscenity, although trial court's incomplete notification at the plea hearing of the

sex-offender registration requirements failed to inform defendant of the residential restrictions applicable to him under R.C. 2950.034, it was sufficient to constitute partial compliance with Crim.R. 11(C)(2)(a) and, since defendant failed to demonstrate the lack of a complete explanation resulted in prejudice, judgment is affirmed, Dangler.

Sentencing. State v. Brown, 2020-Ohio-4534 | 6th Appellate District | 9/11/20 In convicting and sentencing defendant of a violation of community control and re-imposing prison sentence of 11 months, trial court erred by failing to provide allocution to defendant at the community control violation hearing, Crim.R. 32(A)(1); remanded for re-sentencing.

Aggravated menacing. State v. Yoder, 2020-Ohio-4546 | 6th Appellate District | 9/11/20 In conviction of aggravated menacing, R.C. 2903.21, denial of Crim.R. 29 motion for acquittal was not error where victims testified that defendant stared at them, used language victims subjectively believed to be threatening, and had a gun in his waistband that was in plain view, causing victims to flee from motel, while defendant testified, acknowledging he raised his voice and had a gun in his waistband, claiming that he was concerned about a child and that he never threatened the victims.

Search. State v. Burroughs, 2020-Ohio-4417 | 3rd Appellate District | 9/14/20 In conviction by plea of marijuana possession, denial of motion to suppress was not error where, while executing an arrest warrant, a warrantless search of the defendant's residence was not improper since an officer observed the defendant attempting to hide something, and a book bag was legally searched pursuant to the single-purpose container exception where a plastic baggie was hanging out of the book bag and the officer had detected a marijuana odor in the house and observed a marijuana shake on a table.

Plea withdrawal. State v. Myers, 2020-Ohio-4420 | 9th Appellate District | 9/14/20 In conviction by plea of assault, denial of motion to withdraw pre-sentence plea was not error where the trial court had conducted a full Crim.R. 11 colloquy, the defendant did not indicate that he was hesitant to enter his plea or that he needed additional time to consult with his attorney or that he was dissatisfied with his attorney, but it appears he changed his mind about his plea because he felt the court would take new charges into account in fashioning his sentence, and a change of heart does not warrant a grant of motion.

Right to counsel. State v. Sizler, 2020-Ohio-4423 | 11th Appellate District | 9/14/20 In conviction of felonious assault, the defendant's Sixth Amendment right to counsel of choice was not violated where, given the timing of the defendant's complaints of the quality of his attorney's representation and the lack of any specificity for his dissatisfaction, the trial court's findings consistently afforded the defendant his counsel of choice, and a finding that the defendant's seeking to delay the trial interfered with the orderly administration of justice was supported by the record.

Ineffective assistance. State v. Bradford, 2020-Ohio-4563 | 4th Appellate District | 9/14/20 In conviction of possessing a weapon while under disability, defense counsel did not provide

ineffective assistance by not filing a motion to suppress since defendant did not show a reasonable likelihood existed the court would have suppressed the evidence where multiple officers testified the owner of premises searched gave them permission, defendant agreed court could read the indictment language referring to his prior conviction, and the conviction is an element of the charged offense.

Mandamus. State ex rel. Fraley v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-4410 | Supreme Court of Ohio | 9/15/20 Inmate's mandamus action to require the department to revise its calculation of the relator's prison sentence is granted since the respondent has a clear legal duty to carry out the sentence imposed and, because the trial court imposed concurrent sentences in its sentencing entry, the respondent is required to base its calculation of the prison sentence on that entry, notwithstanding a statute required imposition of consecutive sentences since, in the absence of an appeal by the state of the sentence, the respondent must carry out the sentence imposed.

Evidence. State v. Tyus, 2020-Ohio-4454 | 9th Appellate District | 9/16/20 In conviction of, inter alia, aggravated murder, admission of photographs of defendant pointing a gun in the direction of the viewer/camera, even if error because the gun being held by defendant could not be identified as the one used to murder the victim, Evid.R. 403(A), defendant was not materially prejudiced in view of totality of evidence.

Plea withdrawal. State v. Grabe, 2020-Ohio-4435 | 7th Appellate District | 9/16/20 In conviction by plea of obstructing justice, denial of pre-sentence motion to withdraw plea was not error since there was no reasonable and legitimate basis for plea withdrawal where, inter alia, defendant was represented by highly experienced and competent defense counsel, timing of the plea withdrawal motion was not reasonable where defendant waited six weeks after his plea to file his motion while he was out on bond, and defendant received a full and fair plea withdrawal hearing.

Plea. State v. Allen, 2020-Ohio-4444 | 1st Appellate District | 9/16/20 In conviction by plea of, inter alia, attempted murder, plea was validly made where claim defendant denied culpability of during the sentencing hearing is without merit since defendant's apology to the victims during sentencing was not a denial of culpability, he admitted his guilt during the plea hearing, and both of his trial attorneys confirmed to the court at the plea hearing that defendant's plea was intelligent, knowing and voluntary.

Right to counsel. State v. Jordan, 2020-Ohio-4447 | 1st Appellate District | 9/16/20 In conviction of sex offenses, defendant's waiver of his right to counsel was validly made since trial court undertook a sufficient inquiry into whether defendant fully understood and intelligently relinquished the right to counsel where defendant claimed to be a "sovereign citizen" and was uncooperative when the court explained his right to counsel, and court engaged defendant in a detailed and lengthy explanation of what his waiver of counsel entailed that substantially complied with Crim.R. 44(A).

Witness. [State v. Panzeca, 2020-Ohio-4448 | 1st Appellate District | 9/16/20](#) In conviction of, inter alia, OVI, trial court did not commit plain error in considering officer's testimony since claim that state did not establish that testifying officer was in proper uniform when arresting defendant, R.C. 4549.15, was waived on appeal since defendant failed to raise issue at trial, Clark.

Jurisdiction. [State v. Pettus, 2020-Ohio-4449 | 1st Appellate District | 9/16/20](#) Court of appeals has no jurisdiction to consider appeal of denial of 2019 "Motion to Vacate the Void Judicial Sanction Sentence" following 2005 and 2016 convictions of, inter alia, forgery and theft offenses since motion is treated as a petition for post-conviction relief, R.C. 2953.21 et seq., and because the motion alleged a statutory, rather than a constitutional violation, it was not reviewable by the trial court under R.C. 2953.21(A)(1), and thus was not appealable under R.C. 2953.23(B) nor under R.C. 2505.03(A).

Evidence. [State v. Thacker, 2020-Ohio-4620 | 4th Appellate District | 9/16/20](#) In conviction of, inter alia, rape, admission of other acts evidence concerning a previously filed protective order was not error since defendant failed to object to the other acts evidence or the civil protective order at trial and, since defendant's trial counsel used the other acts evidence as part of his trial strategy in an attempt to undermine the victim's credibility, any error was invited and cannot be challenged on appeal.

Self-defense. [State v. Reyes-Figueroa, 2020-Ohio-4460 | 8th Appellate District | 9/17/20](#) In conviction of, inter alia, aggravated murder, trial court did not err in not giving a jury instruction on self-defense where there was not some "evidence presented that tends to support" defendant used reasonable force in self-defense, R.C. 2901.05(B)(1), since, although defendant and another witness testified that victim was reaching toward his back, it was mere speculation he was reaching for a weapon since defendant produced no testimony that victim was known to carry a firearm or made any lethal threats.

Evidence. [State v. Harris, 2020-Ohio-4461 | 8th Appellate District | 9/17/20](#) In conviction of, inter alia, murder, R.C. 2903.02(A) and (B), trial court did not err in permitting officer to testify about the trajectory of a bullet that killed victim that was inconsistent with what defendant had told him since the testimony was admissible as lay testimony under Evid.R. 701 when based on the officer's training and experience, related to his personal observations during the investigation, and was helpful to determine facts in issue.

Sealing. [State v. C.W.D., 2020-Ohio-4463 | 8th Appellate District | 9/17/20](#) Denial of application to seal records was not error because applicant was not an "eligible offender" under R.C. 2953.31(A)(1)(a) or (b) since he has a misdemeanor conviction for an offense of violence, even if he is not requesting that offense be sealed, since the number or type of convictions that a person requests to be sealed is immaterial to the eligibility question.

Plea. [State v. Rodriguez, 2020-Ohio-4464 | 8th Appellate District | 9/17/20](#) In conviction by plea of, inter alia, murder, trial court did not err by accepting defendant's guilty plea where it explained the elements of the offense, degree

of the felony and the penalty, thus informing defendant of the nature of the offense as required by Crim.R. 11(C)(2).

Jury instruction. [State v. Elko, 2020-Ohio-4466 | 8th Appellate District | 9/17/20](#) In conviction of resisting arrest, R.C. 2921.33(A), trial court erred by failing to instruct jury that an officer's use of excessive force in making an arrest is a complete defense to a charge of resisting arrest where defendant and another arresting officer testified that the other officer grabbed defendant's arm prior to effecting an arrest; remanded for new trial.

Judicial release. [State v. Williams, 2020-Ohio-4467 | 8th Appellate District | 9/17/20](#) In conviction by plea of, inter alia, aggravated robbery, plea was validly made where claim that court failed to inform defendant that he was ineligible for judicial release is without merit since there is no requirement that judicial release be explained or that a defendant be informed regarding his or her eligibility or ineligibility for judicial release to comply with Crim.R. 11(C)(2), and nothing in the record indicates that he was ever misinformed regarding his eligibility.

Plea. [State v. Brown, 2020-Ohio-4474 | 8th Appellate District | 9/17/20](#) In conviction by plea of, inter alia, rape, plea was invalid where trial court completely failed to comply with Crim.R. 11(C)(2)(a) with regard to the rape conviction by not informing defendant of his sex offender classification prior to accepting his guilty plea; plea to other offenses was not invalid, even though court did not completely explain post-release control sanctions since court substantially complied with Crim.R. 11(C)(2)(a) and defendant failed to demonstrate prejudice. [/8/2020/2020-Ohio-4470.pd](#)

Domestic violence. [State v. M.H., 2020-Ohio-4477 | 10th Appellate District | 9/17/20](#) Bench conviction of misdemeanor assault and domestic violence were not against the weight of evidence where defendant-mother knowingly caused physical harm to her 12-year-old son and her conduct did not constitute reasonable parental discipline since the method and duration of punishment, consisting of repeated strikes with a belt resulting in red, raised welts and bruising to her son's body, was inappropriate and excessive.

Search. [State v. Bartholomew, 2020-Ohio-4611 | 4th Appellate District | 9/17/20](#) In conviction by plea of, inter alia, pandering obscenity involving a minor, R.C. 2907.321(A)(5), denial of motion to suppress was not error where, although statute that officer relied on to charge defendant, R.C. 2905.05(A), had been ruled unconstitutional at time of trial and had been amended and re-enacted at the time of defendant's arrest, that decision had not been issued when defendant had been charged, and thus officer had probable cause for the arrest and search.

Double jeopardy. [State v. Craft, 2020-Ohio-4494 | 6th Appellate District | 9/18/20](#) In conviction by plea of, inter alia, breaking and entering, defendant was not subjected to double jeopardy where trial court sentenced defendant for offenses that were also considered in 2017 as uncharged offenses in a pre-sentence investigation report by a trial court in a different county in its sentencing on the unrelated offenses of attempted burglary and receiving stolen property.

Jury instruction. [State v. Allen, 2020-Ohio-4493 | 6th Appellate District | 9/18/20](#) In conviction of murder, R.C. 2903.02, although trial court failed to apply the proper law when it determined a voluntary manslaughter instruction was not warranted, any error was harmless where record contains no evidence that defendant was under the influence of sudden passion or rage when he used deadly force since he testified he was scared and was protecting himself when he shot victim, warranting the self-defense instruction.

Court costs. [State v. Housley, 2020-Ohio-4489 | 2nd Appellate District | 9/18/20](#) Following conviction by plea of drug offenses, denial of motion to stay costs was not error where appellant had not shown good cause to stay the action of the clerk to collect court costs since a trial court is not required to consider a defendant's ability to pay when ruling on a motion to waive, suspend or modify court costs, and thus the court was not required to hold a hearing on ability to pay, Taylor.

Impaired driving. [State v. Boles, 2020-Ohio-4485 | 2nd Appellate District | 9/18/20](#) In OVI prosecution, grant of motion to suppress was error where state presented evidence that officer performed field sobriety tests in substantial compliance with NHTSA standards since officer affirmed he had administered tests "per the standards of the NHTSA manual" and he had probable cause to arrest defendant where officers testified viewing vehicular collision, defendant exhibited strong alcohol odor, glassy and bloodshot eyes, slurred speech, uneven gait and admitting to alcohol consumption.

Intervention in lieu of conviction. [State v. Hogel, 2020-Ohio-4488 | 2nd Appellate District | 9/18/20](#) In conviction by plea of drug offenses, denial of intervention in lieu of conviction was not error where trial court found that grant would demean the seriousness of his 12 offenses, R.C. 2951.041(B)(6), and that his position as a pharmacist in a position of trust facilitated the offenses, Wiley.

Evidence. [State v. Gonzales, 2020-Ohio-4495 | 6th Appellate District | 9/18/20](#) In conviction of domestic violence and six counts of violating a protection order, trial court did not err under Evid.R. 804(B)(6) or the Confrontation Clause by allowing victim-mother's statements to be admitted at trial since she was unavailable as a witness "due to the wrongdoing of the party for the purpose of preventing the witness from attending or testifying" where defendant telephoned her over 170 times and wrote her two letters during the period the temporary protection order was in effect.

Jury instruction. [State v. Womack, 2020-Ohio-5018 | 7th Appellate District | 9/18/20](#) In conviction of, inter alia, involuntary manslaughter and corrupting another with drugs, trial court did not commit plain error in instructing the jury on the causation element where the jury instruction complied fully with the Ohio Jury Instructions and, although the trial court did not use the "but for" language, it did state that the words "without which" encapsulates "but for" causation, Williams.

Speedy trial. State v. Robinson, 2020-Ohio-4502 | 9th Appellate District | 9/21/20 In conviction of, inter alia, attempted aggravated murder, defendant's right to a speedy trial was not violated since the date that defendant uses for the calculation of the running of his speedy trial time was based on arrest warrants that had been issued for him in a different county, and his speedy trial time did not begin to run until he was arrested for the offenses in this case that was at a later time, and his trial was within the time limits using that date.

Evidence. State v. Ruth, 2020-Ohio-4506 | 12th Appellate District | 9/21/20 In conviction of aggravated vehicular assault, trial court did not err in admitting testimony of victim's doctor concerning treatment he had provided defendant prior to and subsequent to the traffic accident since doctor's testimony was not offered as expert testimony as to the cause of victim's injury, but admissible lay testimony regarding the treatment he provided victim during a routine check-up five days prior to the accident and five days after the accident.

Search. State v. Hentenaar, 2020-Ohio-4503 | 12th Appellate District | 9/21/20 Grant of motion to suppress in drug prosecution was error since officer had an articulable, reasonable suspicion of a traffic violation to make a traffic stop of defendant's vehicle where officer testified that he observed defendant's vehicle following too closely behind another vehicle, especially as the lead vehicle slowed to turn, and thus it was reasonable for the officer to conclude that defendant committed a violation of R.C. 4511.34(A).

Ineffective assistance. State v. Bell, 2020-Ohio-4510 | 3rd Appellate District | 9/21/20 In conviction of rape and kidnapping, defense counsel did not render ineffective assistance by not objecting to the introduction of the SANE report and to the SANE testimony where nurse's testimony of what the victim described to her concerned the events that allegedly caused the reported injuries and were pertinent to the nurse's diagnosis or treatment and, moreover, the victim's testimony covered most of what is contained in the SANE report and in the SANE testimony.

Ineffective assistance. State v. McCoy, 2020-Ohio-4511 | 3rd Appellate District | 9/21/20 In conviction of, inter alia, rape and felonious assault of defendant's five year-old niece, claim that counsel provided ineffective assistance by not objecting to SANE witness' discussion of bruising and petechiae that she observed on the victim's body is without merit where defendant failed to discuss how he was prejudiced by the admission of that testimony.

Contempt. State v. Orta, 2020-Ohio-4514 | 3rd Appellate District | 9/21/20 Holding courtroom spectator in direct contempt for failure to submit to a drug test was error where nothing in the record suggests that appellant's conduct in the courtroom constituted contemptuous action for trial judge to invoke exercise of his contempt authority under R.C. 2705.01.

Plea withdrawal. State v. Hughes, 2020-Ohio-4516 | 3rd Appellate District | 9/21/20 In conviction by plea of menacing, R.C. 2903.22, denial of pre-sentencing motion to withdraw

plea was not error where defendant received a favorable plea agreement, he did not present any reasonable and legitimate basis for withdrawing his plea, but only a change of heart since his claim of innocence is not substantiated by the record.

Evidence. State v. Janson, 2020-Ohio-4525 | 11th Appellate District | 9/21/20 In conviction of aggravated possession of drugs, R.C. 2925.11(A)(C)(1)(a), arising out of officer's discovery of oxycodone pills during an inventory search of a vehicle that was abandoned by defendant during a snow storm, trial court did not err by excluding a defense witness' pharmacy record reflecting a prescription for oxycodone pills where document was submitted on day of trial and lacked authentication, Evid.R. 901.

Ineffective assistance. State v. McEndree, 2020-Ohio-4526 | 11th Appellate District | 9/21/20 In conviction of, inter alia, aggravated murder, arising out of defendant's shooting of her live-in boyfriend, trial counsel was not ineffective by not requesting a specific jury instruction on battered woman syndrome where court did provide an insanity defense instruction, and debatable trial tactics do not necessarily constitute ineffective assistance when it has not been demonstrated there is a reasonable probability were it not for counsel's error, the result of the proceedings would have been different.

Miranda. State v. Parks, 2020-Ohio-4524 | 11th Appellate District | 9/21/20 In conviction of, inter alia, aggravated burglary, denial of motion to suppress was not error where officers investigating a bank robbery were surveilling residence of owner of the vehicle the robber escaped in and, after hearing that vehicle had been burned, officers drew their weapons and ordered occupants out of a car that pulled into the driveway who could not be observed because of the car's tinted windows and, since statements made by defendant to passenger were not the result of police questioning or interrogation, Miranda warnings were not required.

Sentencing. State v. Hedges, 2020-Ohio-4528 | 11th Appellate District | 9/21/20 Following 2018 conviction by plea of drug and weapon offenses, subsequent violation of blanket sentence of two-year community control resulting in a 18-month prison sentence and 2019 conviction of additional drug and weapon offenses arising out of the community control violation, resulting in a 60-month prison sentence consecutive to the 18-month sentence, although the 2018 sentencing package was error, it was only voidable, not void, and since appellant failed to raise the error on direct appeal, res judicata bars a collateral attack, Harper.

Driver license suspension. State v. Delgros, 2020-Ohio-4529 | 11th Appellate District | 9/21/20 Imposition of lifetime license suspension following conviction of aggravated vehicular assault and failure to stop after an accident was error since the suspension exceeds the prescribed ranges for class four and five suspensions, and thus the sentence is contrary to law, R.C. 4510.02(A)(4) and (A)(5).

Animal abandonment. State v. Earley, 2020-Ohio-4548 | 5th Appellate District | 9/21/20 Conviction of animal abandonment, R.C. 959.01, was not against the weight of evidence where defendant-owner was notified that dog licensed

in her name was in dog warden's custody and defendant failed to pick up dog as required and charges were filed 17 days after dog was brought to warden's facility, and notwithstanding defendant's testimony of why dog was not picked up at warden's facility, jury did not lose its way in making its credibility determinations.

Evidence. State v. Hartman, 2020-Ohio-4440 | Supreme Court of Ohio | 9/22/20 In conviction of rape that was alleged to have occurred in 2015, reversal by court of appeals is affirmed since the admission of other acts evidence that defendant had sexually abused his stepdaughter in 2012 was inadmissible since it was not relevant to any proper purpose under Evid.R. 404(B).

Evidence. State v. Smith, 2020-Ohio-4441 | Supreme Court of Ohio | 9/22/20 In conviction of rape of ten year-old granddaughter, admission of evidence that defendant had previously molested a daughter when she was a child was proper under Evid.R. 404(B) since he claimed that if he touched his granddaughter inappropriately, it was accidental and without sexual intent, and state could refute claim by presenting evidence that he had molested his daughter under similar circumstances, even if he had been acquitted of that charge; admission of other-acts evidence did not violate the Ohio Constitution's protection against double jeopardy.

Vehicular homicide. State v. Dumas, 2020-Ohio-4554 | 10th Appellate District | 9/22/20 Conviction by plea of vehicular homicide, R.C. 2903.06(C), and failure to stop after an accident, R.C. 4549.02, was error in part since defendant's temporary instruction permit was valid at the time of the collision, negating the element that elevated the vehicular homicide charge, even though no licensed driver was in the passenger seat at the time of the accident, R.C. 4507.05(A)(2)(b), since there is no criminal statute providing that violation of this restriction results in an invalidation of the permit, Newirth.

Hearsay. State v. Steward, 2020-Ohio-4553 | 10th Appellate District | 9/22/20 In conviction of felonious assault and improperly discharging a firearm, challenge to admissibility of 9-1-1 recordings of two eyewitnesses, who testified at trial that defendant shot at one of their houses while co-defendant was with defendant, is without merit since the eyewitnesses testified they knew defendants, but claimed at trial that they did not know who did the shooting, and thus statements were admissible as non-hearsay under Evid.R. 801(D)(1)(c) or admissible as excited utterances, Evid.R. 803(1) or (2).

Evidence. State v. Stutler, 2020-Ohio-4562 | 5th Appellate District | 9/22/20 In conviction of gross sexual imposition of a 9-year-old girl, R.C. 2907.05(A)(4), admission of statements made by victim from a forensic interview did not violate defendant's right to confrontation nor violate Evid.R. 403(A) since child victim testified and was subject to cross-examination, and parties had reviewed the forensic interview before trial and agreed what parts could be considered for purposes of medical diagnosis and treatment.

Impaired driving. [State v. Bowden, 2020-Ohio-4556 | 1st Appellate District | 9/23/20](#) Conviction of OVI, R.C. 4511.19(A)(1)(a), was supported by sufficient evidence where officer at an OVI checkpoint stopped defendant from trying to leave the checkpoint and noticed overwhelming odor of marijuana when defendant opened his car door, defendant performed poorly on tests used to test for drug impairment, defendant admitted to taking more Tylenol than prescribed, and officer testified that passenger stated both had been smoking marijuana and car was filled with marijuana smoke.

Post-conviction relief. [State v. Long, 2020-Ohio-4557 | 1st Appellate District | 9/23/20](#) Following 2004 conviction of murder that was affirmed on appeal, denial of successive, untimely petition for post-conviction relief was not error where petitioner's claims of discovery violations by the state failed to satisfy the R.C. 2953.23(A)(1) jurisdictional requirement of demonstrating an outcome-determinative constitutional violation.

Habeas corpus. [State ex rel. Herring v. Wainwright, 2020-Ohio-4521 | Supreme Court of Ohio | 9/23/20](#) Dismissal by court of appeals of inmate's pro se habeas corpus petition is affirmed where, although relator's base sentence pursuant to R.C. 2929.41(A) for convictions after he was released on parole on his 1993 conviction ran concurrent with sentences for 2001 and 2008 convictions after he had been released on parole on the 1993 conviction, the firearm specifications attached to the 2001 and 2008 convictions ran consecutive to the 1993 conviction by operation of former R.C. 2929.14(E)(1)(a), and relator is not entitled to release until December 31, 2022.

Sentencing. [State v. Moore, 2020-Ohio-4715 | 7th Appellate District | 9/23/20](#) Following bindover of juvenile to adult court, conviction of non-homicide felonies and imposition of 112-year prison sentence and remands for re-sentencing, imposition of 50-year prison sentence with parole eligibility after 47 years, when appellant will be 62 years-old, does not violate the Eighth Amendment prohibition of cruel and unusual punishment since it provides appellant a meaningful opportunity for release with the chance to live part of his life outside of prison, Moore and Graham.

Sex offender classification. [State v. Moore, 2020-Ohio-4725 | 7th Appellate District | 9/23/20](#) Following conviction of multiple felonies, including three counts of rape and three counts of complicity to rape, trial court erred in requiring appellant to report annually for a period of 15 years, rather than ten years, after court classified him a sexually-oriented offender under Megan's Law that was in effect at the time appellant committed the offenses when he was originally sentenced in 2002, and thus judgment is reversed and modified to reflect the correct ten-year reporting period.

Self-defense. [State v. Poteet, 2020-Ohio-4732 | 7th Appellate District | 9/24/20](#) In conviction of felonious assault, trial court did not err in not providing a self-defense instruction where, pursuant to the law at the time defendant was indicted, appellant created the situation giving rise to the affray that led to the stabbing of the victim by encouraging victim to engage in a boxing match, R.C. 2901.05; also, state's violation of appellant's Fifth Amendment

right against self-incrimination and failure to specifically identify appellant as the perpetrator of the crime constituted harmless errors.

Theft. [State v. Clinkscale, 2020-Ohio-4735 | 7th Appellate District | 9/24/20](#) Bench conviction of theft, R.C. 2913.02(A)(1), was supported by sufficient evidence based on testimony of a store employee who observed defendant with approximately ten items enter a fitting room and exit the room with one or two items in her hand and a backpack, employee found empty hangers and tags in the room, nothing was in the fitting room prior to defendant's entry, employee observed defendant refuse store managers' request to speak with them and she put down the items she was holding and exited store.

Failure to comply. [State v. Bares, 2020-Ohio-4722 | 7th Appellate District | 9/24/20](#) Conviction of failure to comply, R.C. 2921.331(B), was not supported by sufficient evidence where officer testified that while he was attempting to make a traffic stop, defendant did not speed up, did not travel through any red lights, only traveled six-tenths of a mile from where officer activated his lights and siren and, for the majority of the time between the signal to stop and the stop, the officer was not directly behind defendant.

Habeas corpus. [Carter v. May, 2020-Ohio-4522 | Supreme Court of Ohio | 9/24/20](#) In inmate's pro se petition for a writ of habeas corpus, dismissal of petition by court of appeals was not error since the writ is not available to challenge the sufficiency of the evidence because that claim may be raised on appeal.

Aggravated murder. [State v. Froman, 2020-Ohio-4523 | Supreme Court of Ohio | 9/24/20](#) In appeal of conviction of capital aggravated murder of two persons, R.C. 2929.04(A)(5) and (A)(7), judgment and death sentence are affirmed; issues discussed are: jurisdiction over course-of-conduct death-penalty specifications; other acts evidence; juror bias; leg shackling; Crim.R. 16(K) compliance; denial of continuance; admission of videotaped conversations; admission of gruesome autopsy photographs; prosecutorial misconduct; ineffective assistance; capital sentencing constitutionality; and independent sentence evaluation.

Post-conviction relief. [State v. Cody, 2020-Ohio-4566 | 8th Appellate District | 9/24/20](#) Following 2013 conviction of, inter alia, engaging in a pattern of corrupt activity and denial of multiple post-conviction petitions and motions, denial of post-conviction relief petition challenging fines, court costs and forfeiture was not error where petition was untimely filed, R.C. 2953.21, and does not meet the conditions for the filing of an untimely petition in R.C. 2953.21(A)(1) since the Timb decision relied upon was established law in Ohio when he was convicted, and challenge to the fine is also barred by res judicata.

Post-conviction relief. [State v. Dunbar, 2020-Ohio-4568 | 8th Appellate District | 9/24/20](#) Following 2007 conviction of, inter alia, four counts of gross sexual imposition of a minor, R.C. 2907.05(A)(4), that was affirmed, denial of 2019 motion "to correct illegal sentence" was not error since it is barred by res judicata because trial court complied with the applicable sentencing and classification provisions in effect in 2006 when appellant committed the offenses, and he could have challenged his convictions and sentence on direct appeal.

Jury instruction. [State v. R.L.R., 2020-Ohio-4577 | 10th Appellate District | 9/24/20](#) In conviction of, inter alia, six counts of rape of a minor, although trial court failed to define "sexual motivation," R.C. 2971.01(J), for purposes of the sexual-motivation specifications, the statutory definition provided mirrors the common understanding of the term, and thus there was no prejudicial error, Petkovic.

New trial. [State v. Peterson, 2020-Ohio-4579 | 10th Appellate District | 9/24/20](#) Following 2007 conviction of, inter alia, murder that was affirmed, denial of 2019 motion for leave to file a motion for new trial, Crim.R. 33(A)(6), was not error where neither appellant's motion for leave, nor his affidavit in support, identifies when he obtained the police report that allegedly contained new evidence, and thus appellant failed to demonstrate that discovery of the information was unavoidably delayed.

Plea withdrawal. [State v. Taylor, 2020-Ohio-4581 | 10th Appellate District | 9/24/20](#) In conviction by plea of inducing panic and arson, denial of post-conviction Crim.R. 32.1 motion to withdraw plea was not error where motion was based on matters contained in the record of the trial court proceedings and could have been raised in a direct appeal from the judgment of conviction and sentence, and thus claim is barred by res judicata.

Post-conviction relief. [State v. Brisco, 2020-Ohio-4582 | 10th Appellate District | 9/24/20](#) Following conviction of, inter alia, reckless homicide that was affirmed and denial of motion treated as a petition for post-conviction relief, trial court did not err in denying successive petition for post-conviction relief where it was untimely filed, R.C. 2953.21(A)(2), nor did appellant allege that either of the exceptions in R.C. 2953.23(A)(1) apply to his untimely filing and, moreover, since claim pertained to an allied offense claim, it was barred by res judicata since it could have been raised in the direct appeal.

Sentencing. [State v. Harris, 2020-Ohio-4600 | 5th Appellate District | 9/24/20](#) In conviction by plea of tampering with evidence, arising out of removal of evidence from the scene of a drug overdose that resulted in the death of another, trial court did not violate the American with Disabilities Act, equal protection or due process by sentencing defendant to prison due to defendant's opioid use, but trial court did err by ordering defendant to pay restitution for the funeral expenses of the decedent, R.C. 2929.18.

Jail-time credit. [State v. Nichols, 2020-Ohio-4596 | 2nd Appellate District | 9/25/20](#) Following 2017 conviction by plea to, inter alia, burglary and denial of jail-time credit for the time defendant was on electronically monitored house arrest, denial of 2019 "Motion to Correct Jail-Time Credit" was not error since that time is not specified in R.C. 2967.19(A), Reed, and credit is also barred by res judicata since appellant raised same issue at his sentencing hearing.

Burglary. [State v. Steen, 2020-Ohio-4598 | 2nd Appellate District | 9/25/20](#) Conviction of burglary, R.C. 2911.12(A)(3), met the sufficiency and weight of evidence standards since defendant did not have permission to be in the burglarized house and an audiotape was admitted at trial in which defendant stated he had been in the house during time it was burglarized, circumstantial evidence of property

stolen was seen on defendant's property, and house was occupied even though owner was away for employment where his son stayed there on weekends and another authorized person was there on occasion.

Restitution. State v. Hilton, 2020-Ohio-4590 | 2nd Appellate District | 9/25/20 In conviction by plea of petty theft, award of restitution of \$2,035 was not error where defendant stipulated to the items listed in the victim's witness statement, the list of items was filed with the court's restitution order, and items totaled \$2,035, R.C. 2929.28(A)(1), and a trial court's restitution determination in a theft case is not restricted to a value that corresponds to the level on which the offense was predicated, Wright.

Failure to control dog. Dayton v. Burke, 2020-Ohio-4589 | 2nd Appellate District | 9/25/20 Bench conviction of municipal failure to control dogs was not against the weight of evidence where trial court as trier of fact found testimony of prosecution's witnesses more credible than defendant's who denied owning the dog, but was seen taking it away from another's house after the dog killed a cat at that house and apologizing to the cat owner since the court was free to make its credibility determinations and did not lose its way in making its determinations.

Sentencing. State v. Leet, 2020-Ohio-4592 | 2nd Appellate District | 9/25/20 In conviction by plea of kidnapping and grand theft, imposition of indefinite term of five to seven and one-half years in prison for the kidnapping charge was not error since the indefinite term imposed for the charge was pursuant to the Reagan Tokes Law, R.C. 2901.011, which does not violate the separation of powers doctrine since it does not allow the executive branch to lengthen a sentence beyond the maximum sentence imposed by the trial court, nor does it violate due process, Ferguson.

Sealing. State v. S.D., 2020-Ohio-4597 | 2nd Appellate District | 9/25/20 Denial of application to seal record was error since trial court failed to hold a hearing on the application, R.C. 2953.32(B); remanded for further proceedings.

Gross sexual imposition. State v. Bey, 2020-Ohio-4601 | 6th Appellate District | 9/25/20 Conviction of gross sexual imposition, R.C. 2907.05(A)(1) and (C), was not supported by sufficient evidence where defendant grabbed victim's buttocks one time without warning in an elevator and victim's subsequent fear did not cause her to submit to the sexual contact by defendant where there was no second sexual contact by defendant.

Evidence. State v. Parker, 2020-Ohio-4607 | 6th Appellate District | 9/25/20 In conviction of felonious assault and domestic violence, trial court did not err by granting state's motion for forfeiture by wrongdoing, allowing introduction of hearsay statements victim made to police and medical providers since state established that victim was unavailable and state made good faith efforts to secure her attendance by visiting her home, leaving messages for her, speaking to her relatives, and serving her with two subpoenas and failed to appear for those court dates, Evid.R. 804(B)(6).

Sentencing. State v. Kibler, 2020-Ohio-4631 | 6th Appellate District | 9/25/20 In conviction by plea of burglary, theft and improper handling of a firearm in a motor vehicle, imposition of an aggregate minimum prison term of nine years and an aggregate indefinite prison term of 13 years pursuant to the Reagan Tokes Act, R.C. 2967.271, is dismissed as not ripe for review since defendant has not yet been subject to the statutory provision allowing the department of rehabilitation and corrections to rebut the presumption that defendant will be released after serving his minimum sentence, Downard.

Sentencing. State v. Sipperley, 2020-Ohio-4609 | 6th Appellate District | 9/25/20 In conviction by plea of trafficking in heroin and having weapons while under disability, trial court erred by ordering prison sentences to run concurrently with one another, but consecutively to a prison sentence that he was already serving, without making any of the findings required under R.C. 2929.14(C)(4)(a), (b) or (c) during the sentencing hearing; remanded for re-sentencing.

Sentencing. State v. Sanders, 2020-Ohio-4608 | 6th Appellate District | 9/25/20 In conviction by plea of aggravated drug possession and failure to appear, imposition of consecutive prison sentences totaling 28 months was error where trial court did not make all of the findings required by R.C. 2929.14(C)(4); court also erred by imposing court-appointed counsel fees without a determination as to whether defendant had the ability to pay and also by ordering him to pay costs without orally notifying him at sentencing, Crim.R. 43(A).

Engaging in a corrupt activity/Forgery. State v. Burley, 2020-Ohio-4603 | 6th Appellate District | 9/25/20 In Conviction of engaging in a pattern of corrupt activity and 13 counts of forgery was error where state failed to present sufficient evidence of at least two incidents of engaging in a pattern of corrupt activity, R.C. 2923.31(E) and (I)(2)(c), and trial court lacked subject-matter jurisdiction of the forgery charges where no element of the charged offenses occurred in Ohio, R.C. 2901.11.

Ineffective assistance. State v. Richey, 2020-Ohio-4610 | 6th Appellate District | 9/25/20 In conviction of drug offenses and imposition of consecutive prison sentences totaling seven years and fines totaling \$17,500, defendant received ineffective assistance of counsel where counsel failed to file an affidavit of indigency pursuant to R.C. 2929.18(B)(1) prior to sentencing; remanded for determination as to whether defendant is indigent.

Search. State v. Davis, 2020-Ohio-4821 | 7th Appellate District | 9/25/20 In drug prosecutions in three cases, trial court erred in granting motion to suppress based on the fact that the officer who issued the misdemeanor citation did not testify where accompanying officer who observed the offenses that defendant was arrested for testified that he observed the violations, in addition to testifying that he detected a strong marijuana odor emanating from the car, and his testimony demonstrates he was a trained officer qualified to detect the odor and drug paraphernalia was in plain view.

Miranda. State v. Kalna, 2020-Ohio-5016 | 7th Appellate District | 9/28/20 In conviction of trafficking in persons and compelling prostitution, denial of motion to suppress was not error with the transcript and the DVD of the officer's interview of defendant, giving defendant the Miranda warnings and reviewing each warning with him, and defendant responded affirmatively that he understood, there was no intimidation, coercion or deception by the officer, no promises or threats were made or implied and, although defendant stopped the interview and requested an attorney, he then initiated further communication with the officer.

Impaired driving/Driving with a suspended license. Findlay v. Frenzel, 2020-Ohio-4621 | 3rd Appellate District | 9/28/20 In consolidated appeal of convictions by pleas to OVI and to driving with a suspended license, denial of motion to suppress in the OVI prosecution was not error where defendant consented to blood draw at the police station and at the hospital, and in conviction of driving with a suspended license conviction, officer had a reasonable suspicion of a traffic violation for failure to stop at a stop sign where defendant's car tires were on the painted stop bar on the road, supporting a reasonable suspicion that the front-most portion of vehicle had broken the plane of the edge of the stop line.

Search. State v. Toy, 2020-Ohio-4619 | 9th Appellate District | 9/28/20 In conviction of drug offenses, denial of motion to suppress was not error where trooper had reasonable suspicion to make a traffic stop for a marked lane violation where trooper testified to observing the traffic violations prior to initiation of his dash cam video, even though trooper's testimony was inconsistent about the exact timing of his observation of the violation, and confession that officer testified defendant made occurred at a location for their safety and there was no recording equipment at that location.

Driving under license suspension. State v. Lewis, 2020-Ohio-4633 | 11th Appellate District | 9/28/20 In conviction of, inter alia, driving under a license suspension, R.C. 4510.11, defendant's claim that his lack of a driver's license precluded convicting him of driving under a license suspension is without merit since the definition of "suspend" and "suspension" in R.C. 4510.01(H) includes the "permanent or temporary withdrawal of the privilege to obtain a license, permit or privilege * * * for the period of the suspension" and defendant's privilege to obtain a license had been previously suspended.

Expert witness. State v. Partin, 2020-Ohio-4624 | 12th Appellate District | 9/28/20 In conviction of, inter alia, murder of a three year-old, trial court did not allow expert medical witness' testimony to testify beyond the scope of the expert's opinion letter where, although the doctor's trial testimony added some detail to the summary nature of her opinion letter, Crim.R. 16(K) only requires a summary of the expert opinion and the doctor's testimony explaining her opinion did not constitute such an elaboration that it could be said to have caused unfair surprise.

Felonious assault. State v. Thomin, 2020-Ohio-4625 | 12th Appellate District | 9/28/20 Conviction of felonious assault, R.C. 2903.11(A) (1), and kidnapping, R.C. 2905.01(A)(3), met the sufficiency and weight of evidence standards where defendant restrained victim in a room, prevented her from leaving and inflicted serious physical harm to her by repeated hits, punches and kicks to her face and body, necessitating taking the victim to a hospital, and jury chose to accept victim's testimony regarding the assault and her resulting injuries determinations.

Evidence. State v. Thomas, 2020-Ohio-4635 | 11th Appellate District | 9/28/20 In conviction of, inter alia, aggravated murder, trial court did not err by permitting state to conduct DNA tests on defendant's alternate-suspect theory individuals since they had not been specifically connected with the crime, and state presented expert testimony that the suggested suspects were excluded as possible sources of blood found on the victim's vehicle, and thus allowing the report outside of the Crim.R. 16(K) time limits was proper since the state established good cause and defense did not incur unfair prejudice.

Burglary. State v. Blazo, 2020-Ohio-4636 | 11th Appellate District | 9/28/20 Conviction of complicity to burglary and attempted burglary met the sufficiency and weight of evidence standards where there was circumstantial evidence that defendant was the driver of co-defendant's vehicle that was used during the burglary of one residence and attempted burglary of another residence since co-defendant was observed on surveillance video of residence burglarized, defendant and co-defendant spoke to each other by cell phone during the time co-defendant was engaged in the offenses, and their cell phones pinged in the same area.

Plea withdrawal. State v. McPhillips, 2020-Ohio-4641 | 11th Appellate District | 9/28/20 Following conviction by plea of having physical control of a motor vehicle while under the influence, denial of post-sentence motion to withdraw plea was error where surrounding facts of defendant changing his plea from not guilty to guilty suggests that he received ineffective assistance of counsel, and the record does not demonstrate that defendant was advised by the court of the effect of entering a guilty plea, nor does it reveal any discussion of other considerations, such as potential penalties or rights waived, Crim.R. 11(B) and (E).

Sexual imposition. State v. Ford, 2020-Ohio-4634 | 11th Appellate District | 9/28/20 Conviction of sexual imposition of a minor, R.C. 2907.06(A)(4), was supported by sufficient evidence where defendant's testimony that he touched the victim on her thigh constituted corroborating evidence to the victim's testimony of touching.

Sexual predator classification. State v. Schneider, 2020-Ohio-4630 | 12th Appellate District | 9/28/20 Following plea of two counts of rape, R.C. 2907.02(A)(1)(c), designation of appellant as a sexual predator pursuant to Megan's law, former R.C. 2950.09(B) was not error in view of investigating officer's testimony concerning uncharged sex offenses and psychologist's testimony that demonstrated the likelihood of recidivism.

Reopening. State v. Charity, 2020-Ohio-4720 | 7th Appellate District | 9/28/20 Appellant's supplement to his application to re-open his direct appeal is denied as moot since the application was previously denied, and thus the application is no longer pending.

Plea withdrawal. State v. McKinney, 2020-Ohio-4721 | 7th Appellate District | 9/28/20 In conviction by plea of discharging a firearm on or near a prohibited premises, denial of pre-sentence motion to withdraw plea was not error where only two of the nine Fish factors weighed in appellant's favor, lack of prejudice to the state and timeliness of the motion, and there was evidence that appellant committed the offense and subsequently admitted in a jail call to committing the offense after pleading guilty, and he did not put forth any specific evidence that he was innocent or had a defense to the charge.

Speedy trial. State v. Bunn, 2020-Ohio-4724 | 7th Appellate District | 9/28/20 Following conviction of, inter alia, a weapon offense that was affirmed, denial of petition for post-conviction relief seeking dismissal of conviction on speedy trial grounds was not error where the R.C. 2945.71(E) triple-count provision did not apply since appellant was held in jail while on a detainer for violation of post-release control imposed in a prior unrelated conviction and, even though that post-release control was later held void, he was not being held in lieu of bail on the pending charge.

Restitution. State v. Yerkey, 2020-Ohio-4822 | 7th Appellate District | 9/28/20 In conviction of violating a civil protection order, trial court erred in ordering restitution for victim's wages lost as a result of attendance at court proceedings for prosecution of the crime and not as a direct and proximate result of its commission, R.C. 2929.32 and 2929.01(L), and the enactment of Marsey's Law does not change the result.

Jurisdiction. State v. Rini, 2020-Ohio-4827 | 7th Appellate District | 9/28/20 In conviction of two misdemeanor traffic offenses in which defendant argued that the trial court lacked jurisdiction since he was not a "Fourteenth Amendment citizen," but a citizen of the "Republic of Ohio," judgment is affirmed since trial court had jurisdiction pursuant to R.C. 1901.20(A) and defendant's violations of traffic laws had nothing to do with his citizenship, and trial court was not required to make written findings of fact and conclusions of law.

Plea withdrawal. State v. Jones, 2020-Ohio-4816 | 7th Appellate District | 9/28/20 In conviction by plea of, inter alia, felonious assault, denial of pre-sentence motion to withdraw plea was not error where trial court considered the relevant factors for determining whether to grant the motion and found that defendant's main argument that he was acting in self-defense was without merit since he arguably created the situation by appearing at the victim's home two hours after they had a disagreement at another location, defendant had a thorough Crim.R. 11 colloquy, and it appeared that defendant had a mere change of heart.

Plea. State v. Johnson, 2020-Ohio-5021 | 7th Appellate District | 9/29/20 In convictions by plea in two joined cases of, inter alia, weapon and drug offenses, plea was validly entered where trial court complied with Crim.R. 11(C), even though defendant was not advised by the court that his guilty plea did not preserve all his appellate rights, including denial of the motion to suppress since defendant was interested in the effect of his plea on his motion to dismiss on subject-matter jurisdiction grounds, not on the motion to suppress, with the court stating "[t]his is not a ruling on the motion to suppress that would have to be preserved by virtue of a no contest plea."

Post-conviction relief. State v. Spring, 2020-Ohio-4718 | 7th Appellate District | 9/29/20 Following conviction of murder and tampering with evidence that was affirmed, denial of successive untimely petition for post-conviction relief was not error where claims of ineffective assistance of counsel in not investigating certain pieces of evidence could have been raised on direct appeal, and thus are barred by res judicata.

Reconsideration. State v. Jones, 2020-Ohio-4714 | 7th Appellate District | 9/29/20 Application by state for reconsideration, App.R. 26, of reversal of trial court's denial of pre-sentence motion to withdraw plea is denied where the state fails to identify an obvious error in the court of appeals' decision, nor has the state raised an issue that was either not at all, or was not fully, considered by the court of appeals when it should have been, rather the state simply disagrees with the court of appeals' conclusion and the logic used.

Contract. You v. N.E. Ohio Med. Univ., 2020-Ohio-4661 | 10th Appellate District | 9/29/20 In professor's breach of contract action against university after cancellation of endowed professorship to which professor would be assigned, trial court erred in granting a summary judgment to university on reasoning that the endowed position was a benefit for professor's administrative responsibilities where the offer letter was ambiguous as to whether the endowed chair/professorship was a benefit associated with professor's administrative positions or a separate academic title.

Evidence. State v. S.A.A., 2020-Ohio-4650 | 10th Appellate District | 9/29/20 In conviction of sex offenses of two minor sisters, trial court did not err in not reviewing video interviews of the two prosecuting minor witnesses in advance and in admitting their video interviews as medical interviews since any error did not affect defendant's substantial rights, was not prejudicial, and any error was harmless since the prosecuting minor witnesses and interviewers testified and were subject to cross-examination, Arnold and D.W.

Jury instruction. State v. Golsby, 2020-Ohio-4651 | 10th Appellate District | 9/29/20 In appeal by state in conviction of, inter alia, aggravated murder, trial judge did not err in instructing jury that defendant had "no burden of proof" during the penalty phase since the state bears the burden of proving, beyond a reasonable doubt, that the aggravating circumstances outweigh the mitigating factors in order to impose the death penalty, nor did the court err in declining to instruct the jury that defendant bore the burden of proving the existence of mitigating factors by a preponderance of the evidence.

Search. State v. Sears, 2020-Ohio-4654 | 10th Appellate District | 9/29/20 In appeal by state of grant of motion to suppress in a weapons offense prosecution, trial court did not err in finding that defendant's arrest was not based on a Terry stop or an objectively reasonable mistake in identification and was not justified by officer's subjective belief that he was acting in a reasonable manner where officer failed to verify defendant's identity since officer was looking for a specific individual.

Restitution. State v. Floyd, 2020-Ohio-4655 | 10th Appellate District | 9/29/20 In conviction of, inter alia, discharging a firearm at or into a habitation, restitution order was supported by sufficient evidence since trial court could rely on victim's testimony on damages that she incurred as a result of defendant's offense since nothing in the record indicated that victim received any insurance proceeds and the court found credible the expenses victim testified she incurred in moving to another residence, and record demonstrates the court considered defendant's ability to pay restitution, R.C. 2929.19(B)(5).

Impaired driving. State v. Nelson, 2020-Ohio-4657 | 10th Appellate District | 9/29/20 Conviction by plea of felony level OVI, R.C. 4511.19, and an R.C. 2941.1413(A) specification for prior convictions of five or more violations of R.C. 4511.19(A) or (B) or equivalent offenses met the sufficiency and weight of evidence standards since the state submitted a certified copy of appellant's Ohio BMV record of the prior OVI convictions, constituting prima facie evidence under R.C. 2945.75(B)(2), and it was not necessary for the records to indicate the specific statutes his convictions fell under.

Sentencing. State v. Bland, 2020-Ohio-4662 | 10th Appellate District | 9/29/20 In convictions by pleas in consolidated cases, trial court erred by not merging sentences for grand theft of a motor vehicle and receiving stolen property convictions where court held that the convictions were allied offenses subject to merger, R.C. 2941.25(A), but the court imposed separate concurrent sentences; court also erred by imposing consecutive sentences for perjury and grand theft of a motor vehicle since the record failed to establish any link between the offenses.

Sealing. State v. D.D.F., 2020-Ohio-4663 | 10th Appellate District | 9/29/20 Denial of application to seal record was not error because applicant was not an eligible offender under R.C. 2953.32 since three years had not elapsed between final discharge and the application where applicant had not satisfied her restitution obligation at the time the court issued its order terminating applicant's community control as unsuccessful, notwithstanding that the restitution order had been converted into a civil judgment.

Jury instruction. State v. Owens, 2020-Ohio-4616 | Supreme Court of Ohio | 9/30/20 In a conviction of felony murder with a felonious-assault predicate, no jury instruction for reckless homicide is required to be given as a lesser included offense since felony murder has no mens rea requirement, but reckless homicide does have a mens rea requirement.

Sex offender registration. State v. Bibb, 2020-Ohio-4670 | 9th Appellate District | 9/30/20 Conviction of failure of classified sex offender to register address met the sufficiency and weight of evidence standards where the state presented circumstantial evidence tending to show that defendant lived at a motel with his girlfriend for some time and many people saw him there or in the surrounding area on many different days, the motel owner, assistant manager, and a motel resident were under the impression he lived there, and defendant referred to the motel as home in a call to his girlfriend, and jury did not lose its way in its credibility determinations.

Post-conviction relief. State v. Brown, 2020-Ohio-4671 | 9th Appellate District | 9/30/20 Following 1997 conviction of, inter alia, aggravated murder and affirmation of conviction, but reversal of the principal-offender specification and several re-sentencings and appeals, denial of 2019 "Motion to Correct Statutorily Invalid Sentence" was not error since it is treated as a petition for post-conviction relief, R.C. 2953.21(A)(1), that was filed untimely and was successive, and the exception for untimely or successive petitions in R.C. 2953.23(A)(1)(a) did not apply.

Search. State v. Fletcher, 2020-Ohio-4672 | 9th Appellate District | 9/30/20 In conviction by plea of drug offenses, denial of motion to suppress was not error since the evidence presented by the state at the suppression hearing demonstrated that officers acted in good faith when they misidentified defendant as the subject of an arrest warrant and detained him, noticing an odor of marijuana coming from him, that led to the discovery of drugs on his person.

Rape. State v. Hodges, 2020-Ohio-4693 | 11th Appellate District | 9/30/20 Conviction of rape, R.C. 2907.02(A)(2), met the sufficiency and weight of evidence standards since the state presented sufficient evidence to establish force where victim's testimony indicated she expressed her lack of consent and that defendant used physical force to make her submit to sexual conduct, and the jury did not clearly lose its way in choosing to believe victim's testimony.

Jury. State v. English, 2020-Ohio-4682 | 1st Appellate District | 9/30/20 In conviction of, inter alia, murder, trial court did not err by allowing prosecutor to use a peremptory challenge to remove an African-American potential juror where prosecutor provided a race-neutral reason for the challenge, the potential juror's former marriage to her child's father, a convicted felon who had been in prison, notwithstanding the court's prior disallowance of a cause-based challenge on the same facts since a valid explanation for a peremptory challenge need not reach the level for cause reasons offered by the prosecution, Batson.

Search. State v. Lyle, 2020-Ohio-4683 | 1st Appellate District | 9/30/20 Conviction of carrying a concealed weapon, R.C. 2923.12(B)(1), for defendant's failure to promptly inform officers that he possessed a concealed handgun license was not supported by sufficient evidence since he was not "stopped for a law enforcement purpose" when officers were investigating a report of gunshots in the area and approached vehicle defendant was in, and thus he was under no obligation to inform officer of his concealed

handgun license at that time, and he informed officer of the gun before officer asked him to exit car.

Restitution. State v. McNear, 2020-Ohio-4686 | 1st Appellate District | 9/30/20 In plea of forgery, trial court erred in ordering restitution because his forgery was not a direct and proximate cause of the economic loss victim suffered since there is no evidence to show defendant's conduct was the cause of the victim's losses for damages to her car, missing personal items, her insurance deductible and the re-registration and license fees, R.C. 2929.18(A)(1).

Search. State v. Ulmer, 2020-Ohio-4689 | 1st Appellate District | 9/30/20 In conviction of, inter alia, improperly handling firearms in a motor vehicle, denial of motion to suppress was error since officer had no probable cause to search defendant's car trunk where officer testified an odor of burning marijuana was coming from the vehicle, and he found the odor source by finding the burnt end of a marijuana joint in the passenger compartment, so search of trunk where weapon was found was not justified since no other evidence of wrongdoing was found during the search of the passenger compartment.

Indictment. State v. Rike, 2020-Ohio-4690 | 1st Appellate District | 9/30/20 In conviction of attempted murder and improperly handling firearms in a motor vehicle, although there was no error in the attempted murder conviction, trial court erred by allowing state to amend the charge of improperly handling firearms in a motor vehicle because the amendment changed the identity of the offense charged since different elements were involved, and that conviction is vacated, Crim.R. 7(D).

Aggravated menacing. State v. Hamm, 2020-Ohio-4691 | 1st Appellate District | 9/30/20 Conviction of aggravated menacing, R.C. 2905.02(A), was not supported by sufficient evidence where defendant was lawfully carrying a firearm in a holster strapped to his hip, he did not brandish the firearm, wave it in the air, and he made no threat that would cause a fear of serious physical harm.

Plea withdrawal. State v. Harris, 2020-Ohio-4699 | 6th Appellate District | 9/30/20 Following a 2014 conviction by plea of involuntary manslaughter and court of appeals denial of 2019 motion for delayed appeal, denial of Crim.R. 32.1 motion to withdraw guilty plea was not error since res judicata bars appellant from asserting this claim after sentencing where appellant could have, but failed to, raise the claim on direct appeal, and he already raised the issue of whether trial court gave him proper notice of his appeal rights in his motion for a delayed appeal, and court of appeals rejected the claim.

Sentencing. State v. Maddox, 2020-Ohio-4702 | 6th Appellate District | 9/30/20 In conviction by plea of, inter alia, burglary, challenge to the constitutionality of imposition of indefinite term of incarceration pursuant to the Reagan Tokes law, R.C. 2967.271, authorizing the department of rehabilitation and corrections to administratively extend the prison term beyond the presumptive minimum prison term, is not ripe for review since appellant has not yet been subject to the application of these provisions.

Speedy trial. [State v. McCollough, 2020-Ohio-4703 | 6th Appellate District | 9/30/20](#) In conviction of, inter alia, involuntary manslaughter, defendant's speedy trial right was violated on new charges that were filed in a second indictment since defendant's waiver of speedy trial right made prior to the second indictment did not extend the statute of limitations on the new charges that were filed in the second indictment; remanded for further sentencing.

Post-conviction relief. [State v. Cope, 2020-Ohio-4716 | 7th Appellate District | 9/30/20](#) Following conviction of drug offenses that was affirmed, denial of petition for post-conviction relief without a hearing was not error because petition is barred by res judicata since petitioner's claim of ineffective assistance of counsel in not interviewing his son, sister and parents concerning the general lack of drug activity in his house where meth lab and supplies were found in his basement and drugs in his bedroom during search since his affidavits merely suggest a hypothesis and a desire for future discovery.

Post-conviction relief. [State v. Stewart, 2020-Ohio-4709 | 3rd Appellate District | 9/30/20](#) Following conviction of, inter alia, murder that was affirmed in 1988 and denials of subsequent actions for declaratory judgment and petition for post-conviction relief claiming that conviction was void, denial of 2018 "Motion to Vacate a Void Judgment for Lack of Subject-Matter Jurisdiction," treated as an untimely, successive post-conviction petition for relief from judgment, R.C. 2953.21, is affirmed since it did not meet the requirement for consideration of an untimely appeal, R.C. 2953.23(A)(1) or (2).

Importuning. [State v. Murphy, 2020-Ohio-4667 | 5th Appellate District | 9/30/20](#) Convictions for importuning and disseminating material harmful to juveniles met the sufficiency and weight of evidence standards where social media and text messages sent by defendant to juveniles met the definitions contained for importuning in R.C. 2907.07(B)(1) and (D)(1), and disseminating matter harmful to juveniles in R.C. 2907.31(A)(1) and 2907.01(F)(1), (2) and (5).

Prosecutorial misconduct. [State v. Durham, 2020-Ohio-4758 | 5th Appellate District | 9/30/20](#) In conviction of, inter alia, engaging in a pattern of corrupt activity, R.C. 2923.32(A) (I), claim of prosecutorial misconduct is without merit where appellant failed to show that the prosecutor's comments concerning appellant were improper when taken in context in which the remarks were made and, moreover, appellant failed to demonstrate that any remarks prejudicially affected his substantial rights.

Jail-time credit. [State v. Bair, 2020-Ohio-4761 | 5th Appellate District | 9/30/20](#) In conviction by plea of criminal trespass and imposition of community control after defendant underwent evaluation of his mental condition, trial court erred by failing to give defendant jail-time credit for time served in accordance with R.C. 2949.08 where the parties agreed he served 72 days in confinement while awaiting trial.

Child support. [State v. Brown, 2020-Ohio-4623 | Supreme Court of Ohio | 9/30/20](#) In prosecution of failure to pay court-ordered child support, R.C. 2919.21(B), court of appeals correctly held that grant of defendant's motion to dismiss was error

where defendant was charged with non-support before his child was emancipated and the failure to provide support coincided with defendant's obligation to provide support, even if the child is emancipated at the time the charge is brought so long as the statute of limitations has not run and the other elements of the statute are met.

Plea. [State v. Cobbledick, 2020-Ohio-4744 | 8th Appellate District | 10/1/20](#) In conviction by plea of gross sexual imposition, plea was validly made since trial court was not required by Crim.R. 11(C)(2) to advise defendant of the possibility of consecutive service and, moreover, defendant failed to demonstrate prejudice, court strictly complied with the mandatory advisements in Crim.R. 11(C)(2)(c), and the totality of the colloquy demonstrates defendant understood and intended to plead guilty to one of the counts, even if he did not expressly state he "pleaded guilty" to a count.

Jury instruction. [State v. Phillips, 2020-Ohio-4748 | 8th Appellate District | 10/1/20](#) In conviction of, inter alia, two counts of murder, R.C. 2903.02(A) and (B), trial court did not err by not instructing jury on the inferior offenses of voluntary manslaughter and aggravated assault where there was no evidence that defendant was under the influence of sudden passion or in a sudden fit of rage since victim's threat to kill defendant or defendant's fear is not enough to support reasonable provocation.

Appeal. [State v. Taylor, 2020-Ohio-4770 | 5th Appellate District | 10/2/20](#) In appeal by state of grant of defendant's Crim.R. 29 motion in prosecution of possession of marijuana, R.C. 2925.11(A) and (C)(3)(c), appeal is dismissed because state's appeal should not have been granted since the underlying legal question is not capable of repetition yet evading review since the nexus of this appeal is not one of substantive law, nor capable of repetition in light of the change of law in prosecuting marijuana offenses involving hemp.

Sex offenses. [State v. Ussery, 2020-Ohio-4771 | 5th Appellate District | 10/2/20](#) Conviction of sexual battery and gross sexual imposition of a 10 year-old girl met the sufficiency and weight of evidence standards where victim's testimony and DNA testing supported the conviction and credibility issues were for the trier of fact and it did not lose its way.

Impaired driving. [State v. Greenlee, 2020-Ohio-4764 | 2nd Appellate District | 10/2/20](#) Conviction of OVI and failure to comply met the sufficiency and weight of evidence standards where defendant's claim that officer's identification of him was not based on an observation of him failing to stop at a red light and speeding due to defendant's tinted windows, but on subsequent stop by another officer based on other officer's dispatch is without merit where officer testified that he had a clear view of defendant as he was exiting a parking lot and failed to stop at a red light and sped away as officer attempted a traffic stop.

Plea. [State v. Jones, 2020-Ohio-4767 | 2nd Appellate District | 10/2/20](#) In conviction by plea of rape, plea was validly made since trial court complied with Crim.R. 11(C)(2)(a)-(c), where defendant acknowledged at plea hearing that the court was not bound by the plea agreement containing a joint sentencing agreement, and court imposed a life sentence without

the possibility of parole, notwithstanding that defendant had entered into plea agreements in another county and a federal district court for offenses that provided an opportunity for parole and he anticipated an opportunity of parole in this action.

Search. [State v. Glynn, 2020-Ohio-4763 | 2nd Appellate District | 10/2/20](#) In conviction by plea of drug offenses, denial of motion to suppress was not error since affidavits filed in support of the search warrants provided sufficient probable cause for the search of defendant's residence where, although the affidavit contained no averment from which the trial court could have concluded that the confidential informant was a credible, reliable source of information, the information provided by the confidential informant was corroborated by the investigating officer's observations during the drug purchase.

Plea withdrawal. [State v. Ray, 2020-Ohio-4769 | 2nd Appellate District | 10/2/20](#) In conviction by plea of felonious assault and trafficking in marijuana that was affirmed, denial of motion to withdraw plea as invalid as a result of ineffective assistance of counsel was not error where motion was made two years after defendant was sentenced, the plea hearing fully complied with Crim.R. 11, claim that defendant's attorney told him that he would receive a four-year sentence is contradicted by defendant's sworn statements at the plea hearing, and defendant stated he had no defense to the charges.

Sex offenses. [State v. Burke, 2020-Ohio-4781 | 3rd Appellate District | 10/5/20](#) Conviction of two counts of sexual imposition and one count of gross sexual imposition met the sufficiency and weight of evidence of gross sexual imposition by victim's and another's testimony that defendant pulled on victim's track shorts, touching her thigh, and sufficient evidence of sexual imposition was presented by victim's testimony that defendant touched her hip area, and photographs of defendant embracing victim and touching her in the hip area provided sufficient evidence of touching an erogenous zone.

Appeal. [State v. Hanson, 2020-Ohio-4780 | 12th Appellate District | 10/5/20](#) In conviction of drug offenses and subsequent violation of community control that imposed, inter alia, a 180-day jail sentence, with trial court declining to include jail-time credit of 117 days to 180-day community control jail sentence, appeal of denial of subsequent motion for jail-time credit to be applied to the 18-month reserved prison sentence is dismissed as moot since appellant has served his prison sentence.

Mandamus. [State ex rel. Martre v. Reed, 2020-Ohio-4777 | Supreme Court of Ohio | 10/6/20](#) In pro se mandamus action to compel trial judge in underlying criminal action, in which relator was convicted by plea of pandering following denial of motion to withdraw plea that was affirmed on appeal, to allow the certified search warrant to be included in the record, court of appeals did not err in granting respondent's motion to dismiss since relator had, and exercised, adequate remedies at law, and thus mandamus is not available to re-litigate the same issue.

Sex offense/Obstructing justice. *State v. Betts*, 2020-Ohio-4800 | 9th Appellate District | 10/7/20 In consolidated appeal, convictions against cohabitating defendants, arising out of defendant-mother's daughter's claim of inappropriate touching by defendant-male, resulting in a conviction for sexual imposition against defendant-male and for child endangering and obstructing justice against defendant-mother, are supported by sufficient evidence since evidence of other corroboration for the sexual imposition offense is not required, and conviction against defendant-mother was supported by evidence that she demanded victim recant her claims against defendant-male.

Post-conviction relief. *State v. Payne*, 2020-Ohio-4804 | 9th Appellate District | 10/7/20 Following a 2010 conviction of, inter alia, felonious assault that was affirmed, denial of "Motion to Vacate Judgment for Lack of Jurisdiction" was not error since it is treated as a successive, untimely petition for post-conviction relief, R.C. 2953.21(A)(1)(a), and it did not meet the requirement for consideration of an untimely petition in R.C. 2953.23(A), nor were his convictions void, and petitioner's arguments are also barred by res judicata since they were considered and rejected in his direct appeal.

Sentencing. *State v. Henderson*, 2020-Ohio-4784 | Supreme Court of Ohio | 10/7/20 Sentencing errors, including sentences in which a trial court fails to impose a statutorily mandated term, are voidable, not void, if the court imposing the sentence has subject-matter jurisdiction over the case and personal jurisdiction over the defendant, and neither the state nor defendant can challenge a voidable sentence through a post-conviction motion.

Self-defense. *State v. Parrish*, 2020-Ohio-4807 | 1st Appellate District | 10/7/20 In bench conviction of domestic violence, R.C. 2919.25, trial court erred by failing to apply the burden-shifting provision of the amended self-defense statute, R.C. 2901.05(B)(1), since defendant met her burden of production under the amended statute where record contains evidence that would have raised the question of self-defense in the mind of a reasonable fact finder; on remand, court must determine whether state proved beyond a reasonable doubt that defendant did not use the admitted force in self-defense.

Sentencing. *State v. Smith*, 2020-Ohio-4828 | 8th Appellate District | 10/8/20 On remand from the Ohio Supreme Court on sentencing issues, in conviction by plea of attempted rape and child endangering, trial court did not err in sentencing defendant by mentioning his failing a polygraph test since trial court stated on the record that it did not consider the polygraph test "as evidence of anything" in sentencing defendant, Walton.

Attempted rape. *State v. Anglen*, 2020-Ohio-4830 | 8th Appellate District | 10/8/20 Bench conviction of attempted rape, R.C. 2907.02(A)(2), was supported by the sufficiency and weight of evidence standards where victim's testimony, defendant's testimony and other testimony, including the SANE nurse who examined victim and forensic scientist who testified on the DNA evidence of defendant on victim's body, supported the conclusion that an attempted rape occurred, even if the victim testified that a vaginal rape occurred, and trial

court did not clearly lose its way in its credibility determinations.

Sealing. *State v. G.W.*, 2020-Ohio-4831 | 8th Appellate District | 10/8/20 Denial of application to seal record of convictions was error since appellant was an "eligible offender," R.C. 2953.31(A)(1)(b), where all four convictions resulted from pleas entered during a single plea hearing and all charges were alleged in the same information, the criminal acts were committed within a three-month period and involved the same conduct, forgery and tampering with records, R.C. 2953.32(C)(1); remanded for determination as to whether it is in the public interest for convictions to be counted as one conviction.

Ineffective assistance. *State v. Patterson*, 2020-Ohio-4832 | 8th Appellate District | 10/8/20 In conviction by plea of, inter alia, drug offenses and OVI, defense counsel provided ineffective assistance by failing to file a motion under R.C. 2929.18(B)(1) to avoid imposition of the mandatory fine since there is a reasonable probability that the trial court would have found defendant to be indigent and unable to pay the mandatory drug fine based on his history of drug and alcohol problems and unemployment and had appointed counsel.

Ineffective assistance. *State v. Sinclair*, 2020-Ohio-4860 | 5th Appellate District | 10/8/20 In conviction of OVI, R.C. 4511.19 (A)(1)(d), defense counsel did not provide ineffective assistance by not filing a proper motion to suppress where, even though the motion was denied because counsel did not state with particularity the issues regarding the Intoxilyzer 8000 and did not put the state on notice of the issues defendant intended to raise, the record, including the video evidence of the BAC test, does not reveal any error in the Intoxilyzer, as opposed to a problem with the printer that was fixed, nor would the result have been different if counsel had called witnesses.

Plea. *State v. Nave*, 2020-Ohio-4850 | 2nd Appellate District | 10/9/20 In conviction by plea of possession of drug paraphernalia, state's explanation of the circumstances was sufficient to establish that defendant knowingly possessed drug paraphernalia with the purpose to ingest illegal drugs, R.C. 2925.14(C)(1), where the arresting officer's written statement of the arrest provided sufficient facts demonstrating defendant's intent to use a pen tube containing a drug item where he also failed field tests.

Miranda. *State v. Velliquette*, 2020-Ohio-4855 | 6th Appellate District | 10/9/20 In conviction by plea of, inter alia, aggravated robbery, denial of motion to suppress was not error since defendant's waiver of his rights prior to speaking with police was validly made since preliminary questions were general, identifying questions not requiring Miranda warnings, and his responses did not indicate the intoxication he claimed he was under and the video of the questioning of defendant supports the officer's recollections of defendant's condition; challenge to constitutionality of Reagan Tokes law is not ripe for review.

Self-defense. *State v. Irvin*, 2020-Ohio-4847 | 2nd Appellate District | 10/9/20 In conviction of, inter alia, murder, trial court did not err by not giving a self-defense jury instruction based on the revision to the self-defense statute, R.C.

2901.05, since the amendment of the statute did not have retroactive application to an alleged crime that occurred prior to its effective date, but that came to trial after the effective date; also, requiring defendant to enroll in the Violent Offender Database does not constitute cruel and unusual punishment.

Search. *State v. Mallory*, 2020-Ohio-4848 | 2nd Appellate District | 10/9/20 In conviction of drug offenses, denial of motion to suppress was error since, although defendant was subject to an investigatory detention in officer's encounter with him on a bus on a route that trafficking crimes had previously occurred, officer's search and seizure of defendant's backpack without defendant's permission, leading to discovery of drugs, was not a protective search for weapons since state failed to establish defendant might be armed and dangerous, Terry.

Mistrial. *State v. Scott*, 2020-Ohio-4854 | 6th Appellate District | 10/9/20 In conviction of, inter alia, felonious assault, denial of motion for mistrial based on the erroneous giving to the jury during deliberations of an exhibit of defendant's prior robbery conviction was error where, although trial court gave a curative instruction, it did not question the jury after it had been deliberating for some time with the prior conviction evidence, but error was harmless in view of the overwhelming evidence of defendant's guilt.

Theft. *State v. Taylor*, 2020-Ohio-4852 | 6th Appellate District | 10/9/20 Conviction of theft, R.C. 2913.02, met the sufficiency and weight of evidence standards where defendant took commercial washing machines that had for sale signs on them from a hotel parking lot without permission where a hotel employee testified he confronted defendant as he was taking one of the machines, officer testified that he had seen machines in parking lot with for sale signs on them and they were not adjacent to a trash dumpster, and defendant admitted to the taking of the machines.

Mandamus. *State ex rel. Newsome v. Hack*, 2020-Ohio-4812 | Supreme Court of Ohio | 10/13/20 Following grant of a writ of mandamus to compel a former trial court reporter to inform relator of the cost to obtain a copy of his 2009 sentencing transcript, relator filed a notice that respondents had not complied with the writ of mandamus, prior judgment is vacated and writ is denied since affidavits of respondent and bailiff of trial judge aver that no transcript or recording exists from which a transcript of the sentencing hearing can be executed.

Theft. *State v. Pettus*, 2020-Ohio-4836 | Supreme Court of Ohio | 10/13/20 Court of appeals correctly found no error in trial court's consolidation of multiple theft offenses under R.C. 2913.61(C)(1) since the statute does not limit the aggregation of theft offenses into one count only when the victims are members of specified groups since the unambiguous language of the statute allows aggregation of multiple theft offenses of individual victims, regardless of the victim's status.

Ineffective assistance. State v. Robinson, 2020-Ohio-4880 | 3rd Appellate District | 10/13/20 In conviction of, inter alia, aggravated vehicular homicide and OVI, claim of ineffective assistance of counsel for failure to challenge admissibility of blood test results in a per se OVI conviction is without merit, even though the blood draw was more than three hours after the alleged violation of R.C. 4511.19(A), because defendant was not prejudiced since state presented additional evidence that defendant was under the influence of alcohol based on testimony of the amount of alcohol that he was seen to have consumed, his driving prior to the accident and officers' testimony of their observations of his condition.

Right to counsel. State v. Riley, 2020-Ohio-4878 | 12th Appellate District | 10/13/20 In conviction of burglary and theft, trial court did not err by denying defendant's request for new appointed counsel where, although there was some evidence of a strained relationship, it did not amount to a "complete breakdown" in communication warranting removal, and counsel advice to plead was reasonable in view of state's eyewitnesses who saw the events and who knew defendant.

Expert witness. State v. Rozikov, 2020-Ohio-4884 | 3rd Appellate District | 10/13/20 In conviction of vehicular homicide, R.C. 2903.06(A)(3), trial court did not commit plain error by admission of expert testimony since witness had the requisite specialized knowledge, skill, experience, training and education to testify as to the area-of-impact of the crash and impeding the right-of-way of another vehicle, Evid.R. 702, expert's testimony was based on reliable scientific, technical or other specialized information under Evid.R. 702(C), and his testimony was based on facts supported by the record, Evid.R. 703-705.

Bond forfeiture. State v. Wane, 2020-Ohio-4874 | 12th Appellate District | 10/13/20 Following defendant's failure to appear in two cases in which bonds were posted by surety's representative with limited authority to execute the recognizance and bind surety as the responsible party on the bond, but did not have authority to accept service of process for surety, failure of trial court to provide notice to surety in one case in which bailee was incarcerated in another county rendered forfeiture order in that case error but, in other case, forfeiture is affirmed since surety did not raise issue of lack of notice nor claim that bailee was incarcerated.

Failure to comply. State v. McLean, 2020-Ohio-4893 | 10th Appellate District | 10/13/20 Conviction of failure to comply with an order or signal of a police officer, R.C. 2121.331, was not against the weight of evidence where officer testified he saw defendant driving the vehicle police were in pursuit of and that defendant also ignored police vehicle's red and blue lights, jury was able to view the officer's cruiser video and assess for itself the veracity of his testimony regarding his identification, and jury did not lose its way in making its credibility determinations.

Weapon offenses. State v. Wood, 2020-Ohio-4895 | 10th Appellate District | 10/13/20 In conviction of two counts of felonious assault and weapon offenses, trial court erred in holding that imposition of a three-year prison term on a firearm specification attached to the discharge of a firearm on or near prohibited premises was mandatory, rather than discretionary, R.C. 2929.14(B)(1)(g).

Sexual battery. State v. Baikov, 2020-Ohio-4876 | 12th Appellate District | 10/13/20 Conviction of two counts of sexual battery met the sufficiency and weight of evidence standards since trier of fact could have concluded that at the time defendant engaged in sexual conduct with victim, defendant knew she was submitting because she was "substantially impaired" either by being unconscious or unaware of what was happening based on her excessive alcohol intake and the fact she was sleeping that defendant knew or had knowledge of.

Sentencing. State v. Bechtel, 2020-Ohio-4889 | 11th Appellate District | 10/13/20 In conviction by plea of eight counts of cruelty against companion animals, R.C. 959.131, trial court erred in sentencing defendant to consecutive sentences totaling 720 days in jail since the maximum that may be imposed may not exceed 18 months, R.C. 2929.14(B)(1); sentence is modified to subject appellant to a maximum of 18 months in jail if she violates the terms of her community control.

Evidence. State v. Carver, 2020-Ohio-4984 | 4th Appellate District | 10/13/20 In conviction of, inter alia, rape, R.C. 2907.02(A)(1)(c), trial court did not err in permitting the playing of an entire tape recording between defendant and officer since the tape contained evidence of rape by demonstrating that defendant knew, or had reasonable cause to know, that the victim's ability to resist or consent was substantially impaired because of her physical and mental condition after being shot by defendant, and the playing of the tape also satisfied the corpus delicti rule.

Post-conviction relief. State v. Crawford, 2020-Ohio-4897 | 1st Appellate District | 10/14/20 Following 2007 conviction of, inter alia, aggravated murder that was affirmed, trial court's denial of 2019 "Motion for Re-sentencing Based on Void and Non-final Appealable Order" challenging sentence as void was not error since under Harper any error in imposing the sentences rendered them voidable, not void, and thus the trial court could not re-sentence appellant to correct the mistakes listed in his motion; however, clerical mistakes concerning the order of court costs, imposition of incorrect period of post-release control and incorrectly stating appellant had been convicted on guilty pleas may be corrected pursuant to Crim.R. 36.

Mandamus. State ex rel. Neal v. Mandros, 2020-Ohio-4866 | Supreme Court of Ohio | 10/14/20 In inmate's pro se mandamus action to compel trial judge in underlying criminal action to grant him judicial release from prison under R.C. 2929.20, sua sponte dismissal by court of appeals is affirmed on the basis that a petition for a writ of habeas corpus is the proper action to seek release from prison, not a mandamus action.

Evidence. State v. Farthing, 2020-Ohio-4936 | 5th Appellate District | 10/14/20 In conviction of, inter alia, rape of a minor, R.C. 2907.02(A)(1)(b), trial court did not err in excluding under the rape shield law, R.C. 2907.02(D), evidence of a claimed alternate perpetrator of the rape offense since the rape-shield law includes both consensual and nonconsensual sexual activity and both are barred from admission into evidence absent one of the specific exceptions listed and appellant's arguments do not fall under any of those exceptions, Jeffries.

Right to counsel. State v. Anderson, 2020-Ohio-4937 | 5th Appellate District | 10/14/20 In conviction by plea of aggravated robbery, trial court erred in failing to hold a hearing to inquire about a breakdown in the attorney-client relationship prior to trial since, where an indigent defendant questions the effectiveness and adequacy of assigned counsel by specifically alleging a breakdown in communication, a trial court must inquire into the complaint and make the inquiry a part of the record, Ervin.

Mandamus. State ex rel. Crangle v. Summit Cty. Common Pleas Court, 2020-Ohio-4871 | Supreme Court of Ohio | 10/15/20 In inmate's pro se mandamus action to compel trial judge in underlying criminal action to vacate his allegedly void prison sentence of life imprisonment with parole eligibility after ten years that was affirmed on direct appeal, grant of respondent's motion to dismiss was not error since sentencing errors are reviewable on direct appeal, and thus relator had an adequate remedy at law precluding extraordinary relief in mandamus, Green and Harper.

Post-conviction relief. State v. Jackson, 2020-Ohio-4914 | 8th Appellate District | 10/15/20 Following conviction of capital aggravated murder that was affirmed, grant of petition for post-conviction relief was error because trial court failed to fully consider Atkins claim in light of the Lott factors, including the rebuttable presumption that a defendant is not intellectually disabled if IQ is above 70 since court's conclusion of intellectual disability is inconsistent with the evidence it relied on to make that conclusion, and it also arbitrarily rejected expert opinions of two doctors; remanded for consideration in light of Ford.

Murder. State v. Jones, 2020-Ohio-4915 | 8th Appellate District | 10/15/20 Conviction of murder and attempted murder met the sufficiency and weight of evidence standards under either a principal offender theory or an accomplice theory, based on eyewitness trial testimony, defendant's admission that he had fired a gun into a crowd of people at the scene and surveillance video footage in which defendant and another person were each seen shooting guns at the scene, and jury did not lose its way in making its credibility determinations.

Plea withdrawal. Parma v. Jakupca, 2020-Ohio-4918 | 8th Appellate District | 10/15/20 In conviction by plea of petty misdemeanor OVI, R.C. 4511.19(A), denial of post-sentence motion to withdraw plea was not error since trial court complied with the Crim.R. 11(E) requirement by informing defendant of the effect of plea by substantially informing him that his guilty plea was an admission of guilt, Crim.R. 11(B), and defendant never asserted an actual innocence claim or that he did not understand the effect of his plea, only that he did not understand the consequences of his plea.

Endangering children. State v. Crenshaw, 2020-Ohio-4922 | 8th Appellate District | 10/15/20 On reconsideration, conviction of endangering children, R.C. 2919.22(A) and (B)(1), was not supported by sufficient evidence where bruises inflicted by defendant on her nine year-old daughter did not constitute serious physical harm, R.C. 2901.01(E), and although sufficient evidence supported domestic violence conviction pursuant to R.C. 2919.25(A) since

defendant's conduct of pushing her child into a wall was not a proper disciplinary method, state did not provide sufficient evidence to prove the conviction should be enhanced per R.C. 2919.25(D)(3); original opinion, 2020-Ohio-3183, is vacated.

Sentencing. State v. Buckney, 2020-Ohio-4927 | 2nd Appellate District | 10/16/20 Following 2005 conviction of, inter alia, aggravated robbery that was reversed for re-sentencing pursuant to Foster, but re-sentencing did not occur until 2019 pursuant to grant of mandamus, judgment is affirmed since, although appellant's right to a speedy trial was delayed by the 13-year delay in re-sentencing after remand and is inexcusable, he was not prejudiced since he was lawfully incarcerated during the entire period due to the length of his 26-year sentence, counsel was not ineffective at re-sentencing, and claim that offenses were not merged as allied for sentencing is barred by res judicata.

Domestic violence. State v. Johnson, 2020-Ohio-4928 | 2nd Appellate District | 10/16/20 Bench conviction of domestic violence, R.C. 2919.25(C), met the sufficiency and weight of evidence standards where defendant and his brother who lived in the same house had a disagreement resulting in a physical confrontation and defendant charged at the victim with an open knife that victim testified caused him to fear for his life that was sufficient to permit a reasonable mind to find that defendant would cause the victim imminent physical harm, court did not lose its way in making its credibility determinations, and record did not support a self-defense claim.

Drug offense. State v. Sparks, 2020-Ohio-4930 | 2nd Appellate District | 10/16/20 Conviction of aggravated possession of drugs, R.C. 2925.11(A), met the sufficiency and weight of evidence standards where the state established that defendant knowingly possessed methamphetamine since officer testified he found a pipe in defendant's coat pocket with a white powdery substance during a search of defendant at jail following his arrest for disorderly conduct and officer reasonably believed substance to be methamphetamine based on his experience, and jury did not lose its way in making its credibility determination of officer's testimony and defendant did not testify or offer any other evidence.

Plea withdrawal. State v. Meadows, 2020-Ohio-4942 | 6th Appellate District | 10/16/20 In conviction by guilty plea of domestic violence and abduction, denial without a hearing of post-sentence motion to withdraw plea was not error where a clerical error was made in the plea form of the statute that defendant was convicted of violating, but plea form also listed the correct statute and set forth the potential penalties, and the court complied with Crim.R. 11(C)(2)(a) and made it clear the statutes defendant was convicted of by informing him of the offenses he was agreeing to plead guilty to and the potential prison sentences that could be imposed.

Restitution. State v. Young, 2020-Ohio-4943 | 6th Appellate District | 10/16/20 In conviction by plea of theft, R.C. 2913.02(A)(2) and (B)(2), imposition of restitution was not error since the trial court complied with R.C. 2929.18(A)(1) where the state provided testimony and documentary evidence in support of the victim's

economic loss, including itemized monthly bank statements and a spreadsheet summarizing authorized and unauthorized withdrawals made from the victim's accounts, as well as the victim's testimony concerning the unauthorized withdrawals from her bank account, and defendant offered no basis for establishing and calculating the amount stolen.

Dismissal. State v. Walker, 2020-Ohio-4949 | 3rd Appellate District | 10/19/20 In prosecution of domestic violence, trial court erred in sua sponte dismissing the complaint without notifying the state prior to its ruling in violation of Crim.R. 48(B), Myrick.

Arson. State v. Everhart, 2020-Ohio-4948 | 12th Appellate District | 10/19/20 Conviction of attempted arson met the sufficiency and weight of evidence standards where defendant's DNA was identified on various parts of an incendiary device found on victim's land near a barn, and defendant had a motivation to damage defendant's property where he was living on property adjoining victim's other property after the victim had purchased the property defendant was living on from the defendant's mother and defendant was told to vacate the premises, but had not at the time of the incident.

Menacing. State v. Fiederer, 2020-Ohio-4953 | 11th Appellate District | 10/19/20 Conviction of aggravated menacing, R.C. 2903.01, met the sufficiency and weight of evidence standards where victim identified defendant in a photo array and at trial as the person who drove a pick-up truck towards her in a parking lot, even though she initially told the investigating officer that the driver had a pony tail, but later retracted that statement, surveillance video confirmed victim's statement of the incident, and jury was free not to believe defendant's testimony that another person was driving his truck that day where defendant initially said no one else was driving vehicle and then stated another person did drive it, but did not name that alleged person.

Appeal. State v. Reyes, 2020-Ohio-4955 | 11th Appellate District | 10/19/20 Following 2010 conviction by plea of four counts of rape and violating a protective order, appellant filed a 2020 motion to re-enter the original sentencing entry, but trial court instead held that a motion for judicial release was denied, appeal is dismissed since a denial of a motion for judicial release is not appealable and the appealed judgment does not decide the motion to re-enter sentence that remains pending.

Search. State v. Henak, 2020-Ohio-5023 | 5th Appellate District | 10/19/20 In conviction by plea of cocaine possession, denial of motion to suppress was not error where officer had probable cause to search defendant passenger in a vehicle stopped for a vehicle license violation since search of defendant followed officer's discovery of drug paraphernalia during search of passenger area of vehicle consented to by driver, and subsequent search of defendant pursuant to her permission following her arrest revealed cocaine in her possession.

Reopening. State v. Tewel, 2020-Ohio-5010 | 8th Appellate District | 10/20/20 Application to re-open appeal, App.R. 26(B), is denied where filed untimely without providing good cause and more than 10 months has passed since the court of appeals' decision, App.R. 26(B)(2)(b).

Procedendo. McDougald v. Kuhn, 2020-Ohio-4924 | Supreme Court of Ohio | 10/20/20 In inmate's pro se procedendo action to compel trial judge in underlying criminal action to journalize a final judgment of conviction, dismissal by court of appeals is affirmed where relator failed to show a clear legal right to relief in procedendo since the trial judge correctly journalized relator's conviction in the judgment of conviction, Crim.R. 32(C) and Lester, and an error in the docket entry does not equate to an error in the journalization of the judgment.

Jury instruction. State v. Price, 2020-Ohio-4926 | Supreme Court of Ohio | 10/20/20 Court of appeals did not err in holding that trial court properly instructed the jury on the offense of corrupting another with drugs, R.C. 2925.02(A)(3), since the trial court provided the "but for" test that defendant had sought, and the instructions did not permit the jury to predicate guilt based on a finding that the drugs defendant furnished to victim were a substantial or contributing cause of the victim's death.

Evidence. State v. Mott, 2020-Ohio-4979 | 5th Appellate District | 10/20/20 In conviction of illegal use of Supplemental Nutrition or WIC Program Benefits, R.C. 2913.46, trial court erred in admitting other-acts drug evidence, an unredacted traffic stop video and the entire contents of defendant's cell phone since they were not admissible for any purpose under Evid.R. 404(B) where each of trial court's purported rationales either invited an improper character reference or was irrelevant to a material issue in the case, Hartman; also, prosecutor's statements of defendant's alleged sale or exchange of drugs were irrelevant and improper.

Sentencing. State v. Clark, 2020-Ohio-5013 | 5th Appellate District | 10/20/20 In conviction by plea of drug offenses, challenge of the constitutionality of imposition of prison sentence to an aggregate minimum prison term of three years and an aggregate indefinite maximum prison term of four and one-half years pursuant to S.B. 201, the Reagan Tokes Act, is premature since the issue is not yet ripe for review since defendant has not yet been denied release at the expiration of his minimum term of incarceration.

Reopening. State v. Butts, 2020-Ohio-5011 | 8th Appellate District | 10/20/20 Application to re-open appeal, App.R. 26(B), is denied where claim that trial court improperly precluded the cross-examination of a witness using a prior statement made in a search warrant was harmless error since the statement in the warrant was a minor error in the affidavit and the witness testified consistent with it being a typographical error in the affidavit, and state did not commit a discovery violation concerning medical records that were not relevant to this case.

Mandamus. State ex rel. Olmstead v. Forsthoefel, 2020-Ohio-4951 | Supreme Court of Ohio | 10/21/20 In pro se mandamus action to compel trial judge in underlying criminal action to vacate his sentence, merge two counts and re-sentence him, court of appeals did not err by granting respondent's motion to dismiss since relator had an adequate remedy at law to raise his sentence merger claim by way of a direct appeal from his underlying convictions, and claim of ineffective assistance of counsel was raised in relator's application to re-open appeal under App.R. 26(B) that was denied for a procedural failure in filing the application.

Search. State v. Lee, 2020-Ohio-4970 | 9th Appellate District | 10/21/20 In conviction of OVI and drug offenses, denial of motion to suppress was not error since officer had reasonable suspicion to make a traffic stop based on observation of a suspected traffic violation of an un-illuminated rear license plate, and officer had reasonable suspicion to infer additional criminal activity based on his observation of defendant's erratic driving at a late hour and during stop officer observed defendant had bloodshot and glassy eyes, smelled slightly of alcohol, and was sweating profusely in mild weather, constituting reasonable suspicion to conduct field sobriety testing.

Self-defense. State v. Smith, 2020-Ohio-4976 | 1st Appellate District | 10/21/20 In conviction of, inter alia, murder, arising out of defendant shooting the victim during an altercation that involved defendant, her daughter, the victim and others, the state proved beyond a reasonable doubt that defendant did not act in self-defense or in defense of another where jury could have reasonably found defendant was at fault in creating the situation that led to affray and her shooting of victim, that she did not have a bona fide belief of imminent danger of death or great bodily harm, or that she violated a duty to retreat, R.C. 2901.05(B)(1).

Sentencing. State v. Smith, 2020-Ohio-4977 | 1st Appellate District | 10/21/20 Following conviction of, inter alia, burglary and drug trafficking and remands for re-sentencing for various offenses, appeal after re-sentencing raising issue of allied offenses for burglary and drug trafficking offenses is barred by res judicata since appellant could have raised issue in his initial appeal, but failed to do so; also, challenge to imposition of consecutive sentences is without merit since trial court made the required R.C. 2929.14(C)(4) findings, and appellant does not contest the factual conclusions underlying the trial court's findings.

Sentencing. State v. Dames, 2020-Ohio-4991 | 8th Appellate District | 10/22/20 In 2019 conviction by plea of, inter alia, felonious assault in which defendant was sentenced pursuant to the Reagan Tokes Act and trial court imposed a prison sentence of a minimum term of seven years with an indefinite maximum term of ten and a half years, court of appeals holds that defendant failed to preserve his claim challenging the constitutionality of the Act by not raising it at the trial court or arguing that the court committed plain error, and court of appeals declines to exercise its discretion to review the constitutionality of the Act.

Jury instruction. State v. Kidd, 2020-Ohio-4994 | 8th Appellate District | 10/22/20 In conviction of, inter alia, assault, trial court committed plain error in instructing jury on the offense of assault, R.C. 2903.13(A), as a lesser included offense of domestic violence since the misdemeanor domestic violence offense and the misdemeanor assault offense were of the same degree, Evans; remanded for vacation of assault conviction.

Court costs. State v. Johnson, 2020-Ohio-4997 | 8th Appellate District | 10/22/20 In conviction of, inter alia, aggravated murder and imposition of court costs, with the conviction upheld on appeal, but case was remanded for re-sentencing for failure to merge allied offenses for sentencing, trial court on re-sentencing did not err by not considering court costs or not imposing court costs on the record during re-sentencing since the scope of remand did not require reconsideration of court costs; however, pursuant to R.C. 2947.23(C), the trial court has continuing jurisdiction to waive, suspend or modify the payment of court costs at any time after the sentencing hearing.

Felonious assault. State v. Mason, 2020-Ohio-4998 | 8th Appellate District | 10/22/20 Conviction of felonious assault, R.C. 2903.11(A)(1), was supported by sufficient evidence where medical records of victim's treatment following defendant's infliction of multiple injuries, including broken ribs, a punctured lung and a broken nose were admitted at trial, and expert witness testimony was not required to substantiate the medical records since victim's injuries were serious enough that he sought medical treatment, it was reasonable for jury to infer that "the force exerted on the victim caused serious physical harm as defined by R.C. 2901.01(A)(5)," Montgomery.

Delinquency. In re D.H., 2020-Ohio-5003 | 8th Appellate District | 10/22/20 Adjudication of juvenile as delinquent for adult sex offenses did not violate due process where the indictment contained sufficient allegations of the conduct and time frame of the offenses, and sufficient evidence was presented at trial concerning the time and location the offenses involving a child victim, and the offenses did not merge since the acts were committed separately and involved separate conduct by appellant.

Ineffective assistance. State v. Thomas, 2020-Ohio-5007 | 8th Appellate District | 10/22/20 In conviction of, inter alia, aggravated murder, claim of ineffective assistance of defense counsel based on claim that counsel failed to file a more specific motion to suppress is without merit where, after officers provided Miranda warnings and defendant requested an attorney and officers then solely informed him of the charges that would be filed, defendant initiated further communication with the officers, thereby waiving his right to counsel, and officers also had probable cause to arrest based on DNA evidence linking defendant to a murder.

Competency. State v. Lozada, 2020-Ohio-5008 | 8th Appellate District | 10/22/20 In conviction by plea of aggravated robbery, claim that trial court failed to perform a proper competency hearing with a report prepared by a medical professional prior to accepting a guilty plea is without merit since defendant failed to reference or identify any indicia of incompetence that would support a claim necessitating the constitutional analysis of his right to an evaluation, and the court

conducted the statutorily required hearing at the time the claim was made on the day set for trial, R.C. 2945.371(C).

Endangering children. Cleveland v. Alrefaei, 2020-Ohio-5009 | 8th Appellate District | 10/22/20 In conviction of, inter alia, two counts of endangering children, although there was sufficient evidence to convict defendant of endangering one child who was restraining defendant while defendant was holding a knife, the evidence was insufficient to convict defendant concerning another child who was present during the event since the record only contains vague references to the child's location during the incident, no direct evidence of his proximity to the physical struggle, any involvement in the struggle to restrain defendant or the scope of his observations.

Reopening. State v. Hardin, 2020-Ohio-5039 | 6th Appellate District | 10/22/20 Pro se application to re-open appeal, App.R. 26(B), is granted where appellant established there was a genuine issue whether he has a colorable claim of ineffective assistance of appellate counsel based on appellant's allegation of a conflict of interest that his assigned trial counsel had because when appellant was bound over for trial, the prosecuting attorney on this case was later appointed trial counsel for appellant.

Fair trial. Cleveland v. Alrefaei, 2020-Ohio-5009 | 8th Appellate District | 10/22/20 In conviction of, inter alia, two counts of endangering children, arising out of a domestic altercation between defendant and his wife and members of his family, denial of defendant's motion to separate witnesses was not error where, although trial court's consideration of Marsy's Law, permitting victims to be present at all stages of a trial, this case was incomplete without the full consideration of defendant's own and equally relevant due process rights to a fair trial, and defendant failed to satisfy his burden of demonstrating that the presence of each victim compromised his right to a fair trial.

Venue. State v. Shutway, 2020-Ohio-5035 | 2nd Appellate District | 10/23/20 In conviction of failure to comply with an order or signal of an officer and one count of obstructing official business, there was no plain error in jury verdict forms that did not include a finding of venue since it is not a material element of any offense charged and, moreover, the language used in the verdict forms sufficiently established that the jury found that the offenses were committed in the appropriate county when read together with the jury instructions.

Venue. State v. Dillon, 2020-Ohio-5031 | 2nd Appellate District | 10/23/20 In conviction of theft, receiving stolen property and forgery, challenge to venue is without merit where, although the state's evidence established defendant uttered the forged check at a bank in a county not within the trial court's jurisdiction, the forgery offense occurred as part of defendant's course of conduct, including the theft of the check and the unauthorized use of the victim's vehicle in the county in which the trial court is located pursuant to R.C. 2901.12(H)(1) and (3), and thus venue was proper in the trial court.

Confrontation Clause/Hearsay. State v. Santellana, 2020-Ohio-5041 | 6th Appellate District | 10/23/20 In conviction of aggravated burglary with a firearm specification, admission

of officer's testimony of victim's statements to him was not error where statements were made in the course of the officer's investigation of the emergency to provide the officers with the information needed to apprehend the robbers and thus did not violate the Confrontation Clause, and victim's statements were also properly admitted under both the present sense impressions and excited utterances exceptions to the hearsay rule, Evid.R. 803(1) and (2).

Sexual imposition. *State v. Walker*, 2020-Ohio-5043 | 6th Appellate District | 10/23/20 Conviction of sexual imposition, R.C. 2907.06(A) (1), met the sufficiency and weight of evidence standards where the testimony and evidence presented at trial were sufficient to permit the trier of fact to find all elements of sexual imposition were proven beyond a reasonable doubt, including the victim's testimony, the DNA results from the zipper region of the victim's jeans, text messages between the victim and her sister and the sister's testimony, and the jury did not lose its way in making its credibility determinations.

Competency. *State v. Swartz*, 2020-Ohio-5037 | 2nd Appellate District | 10/23/20 In conviction by plea of rape and two counts of sexual battery, trial court did not err in finding defendant competent to stand trial based on the uncontested competency report prepared by a physician at a forensic psychiatry center, and when defendant entered his no contest plea, he affirmed that his condition did not affect his ability to understand the plea proceedings.

Child endangering. *State v. Klofta*, 2020-Ohio-5032 | 2nd Appellate District | 10/23/20 Conviction of child endangering, R.C. 2919.22(A), met the sufficiency and weight of evidence standards since the statute applies when a child is injured while in a defendant's care, rising to the level of an inexcusable failure to act in discharge of a duty to protect the child after the defendant disciplined the child with a stun gun, resulting in injury to the child and defendant failed to tend to the injury resulting from the stun gun that was visible for a week.

Search. *State v. Pack*, 2020-Ohio-5033 | 2nd Appellate District | 10/23/20 In conviction by plea of aggravated possession of drugs, denial of motion to suppress was not error where officer received request from a business owner who recently had property from his lot stolen, to check on a rental truck in the rear of his premises, officer called for a canine unit, when officer approached the truck he recognized the vehicle and the individuals, their interaction with him was antagonistic and erratic, he also saw in plain view in the vehicle little round clear pieces of plastic used to store drugs, the canine was alerted, and officers found drugs in the vehicle.

Capital punishment. *State v. Short*, 2020-Ohio-5034 | 2nd Appellate District | 10/23/20 Following 2004 conviction of two capital aggravated murders that was affirmed, denial of 2019 motion for a new mitigation trial was not error since the motion was substantively without merit based on the Ohio Supreme Court holding in *State v. Mason* that distinguished the U.S Supreme Court decision in *Hurst v. Florida* regarding imposition of capital punishment relied on by appellant, and thus he was not entitled to a new mitigation trial by relying on *Hurst*.

Sentencing. *State v. Toney*, 2020-Ohio-5044 | 7th Appellate District | 10/23/20 In second remand for re-sentencing on imposition of consecutive sentences in conviction of murder and felonious assault, trial court did not commit plain error by conducting the re-sentencing hearing by teleconference, even though appellant appeared by teleconference without signing a written waiver pursuant to Crim.R. 43(A) and defendant failed to object and failed to demonstrate prejudice.

Involuntary manslaughter. *State v. Williams*, 2020-Ohio-5045 | 7th Appellate District | 10/23/20 In conviction of involuntary manslaughter arising out of a drug overdose that was affirmed, pro se motion to certify conflict, App.R. 25, is denied since opinion is not in conflict with the opinion in *Kosto* where the facts in that case are not the same as in this case since in *Kosto* it was the combination of two drugs that caused the death of the victim, but in this case the state demonstrated that he amount of a drug supplied by the defendant was a lethal dose.

Sentencing. *State v. Hacker*, 2020-Ohio-5048 | 3rd Appellate District | 10/26/20 In conviction by plea of aggravated burglary and a firearm specification, trial court did not err by imposition of an indefinite sentence of a minimum of six years and a maximum of nine years pursuant to the Reagan Tokes Act, R.C. 2967.271, where claim that the Act is unconstitutional as violating the right to a trial by jury is waived since it was not raised at trial and, moreover, the Act does not violate the separation of powers since it does not permit the executive branch to maintain appellant beyond the maximum prison term imposed by the trial court.

Sexual battery. *State v. Ward*, 2020-Ohio-5054 | 12th Appellate District | 10/26/20 Conviction of sexual battery, R.C. 2907.03(A)(3), was not against the weight of evidence where victim testified that defendant had unconsented sexual contact with her that awoke her from her sleep while defendant testified that he was only trying to cover the victim while she was sleeping since jury did not clearly lose its way in making its credibility determinations.

Jury instruction. *State v. Mosley*, 2020-Ohio-5047 | 9th Appellate District | 10/26/20 In conviction of, inter alia, rapes of two minors less than 13 years-old, trial court did not commit plain error in its jury instructions where defendant failed to object to the jury instructions or to the service of them on his counsel, Crim.R. 30(A), and although court erred in instructing the jury if it found the state "failed to prove beyond a reasonable doubt all the essential elements" of an offense, the jury must find the defendant not guilty, it was not plain error since the court correctly charged jury at the beginning of the jury instructions and gave the correct instruction on all the other nine charges.

Search. *State v. Karsikas*, 2020-Ohio-5058 | 11th Appellate District | 10/26/20 In conviction of, inter alia, drug offenses, denial of motion to suppress was not error where officer had reasonable suspicion of drug activity based on another officer's dispatch about a person leaving and driving from a known drug house, the arresting officer saw the vehicle park in the lot of another known drug house, officer knew defendant-driver from past drug encounters with

him, and officer could rely on another officer's hearsay report about suspected criminal activity since at a suppression hearing a court may rely on hearsay and other evidence, even though it is not admissible at trial.

Right to counsel. *State v. Howard*, 2020-Ohio-5057 | 11th Appellate District | 10/26/20 In conviction of, inter alia, aggravated robbery, trial court did not err by denying defendant's request to remove his appointed trial attorney where request was made 15 minutes prior to trial and the court justifiably concluded that defendant was attempting to delay the proceedings and, even if defendant sought to discharge counsel because counsel had failed to file the motions defendant wanted filed, that reason is insufficient to compel a court to allow a substitution since a defendant has no constitutional right to determine trial tactics and strategy of counsel.

Right to counsel. *State v. Boatwright*, 2020-Ohio-5068 | 7th Appellate District | 10/26/20 In conviction of first-degree misdemeanor theft, R.C. 2913.02(A), although defendant did not make a valid waiver of counsel, he was not entitled to counsel since he was convicted of a petty offense, Crim.R. 44(B), but the imposition of a jail sentence was error in the absence of counsel or a valid waiver of counsel, Alexander.

Bond. *State v. Higgins*, 2020-Ohio-5076 | 5th Appellate District | 10/26/20 Finding of contempt of appellants-individuals surety officers for breach of bond was error where an ambiguity exists whether appellants-individuals are personally liable for the bond debt arising out of bonded individual's violation of bond where there was an issue as to whether appellants were personally liable since there is an ambiguity concerning the capacity in which the appellants signed the recognizance form and whether they intended to be personally responsible for the debt, R.C. 1337.092; remanded for a determination of the parties to the contract and the intent of those parties.

Search. *State v. Walton*, 2020-Ohio-5062 | 10th Appellate District | 10/27/20 In conviction by plea of carrying a concealed weapon, denial of motion to suppress was error where person arrested by police after a 9-1-1 identified citizen's tip about a person that caller said was wearing a maroon jogging suit, standing near a blue Honda at a specific address, had a gun and whom caller believed was trying to harm her since caller did not have personal knowledge because the information that the person had a gun was given to caller by her daughter, and also police arrested defendant who did not match caller's description of the person with the gun.

Sentencing. *State v. Williams*, 2020-Ohio-5071 | 1st Appellate District | 10/28/20 In conviction by plea of drug and weapon offenses and subsequent violation of community control, trial court erred in imposing a sentence greater than the sentence that it specified would be imposed for a community control violation in the notice provided to defendant at the original sentencing hearing, R.C. 2929.15(B)(3); remanded for re-sentencing.

Expert witness/Discovery. State v. Howard, 2020-Ohio-5072 | 1st Appellate District | 10/28/20 In conviction of, inter alia, rape, trial court erred by allowing state's expert witness, a sexual assault nurse examiner who examined the victim at a hospital following an incident with defendant, to provide expert opinions concerning her evaluations that supported the credibility of the alleged victim since state failed to provide the defense with a Crim.R. 16(K) expert report.

Confrontation Clause. State v. Baker, 2020-Ohio-5094 | 5th Appellate District | 10/28/20 In bench conviction of, inter alia, engaging in a pattern of corrupt activity, R.C. 2923.32(A) (1), admission of reports of stolen items that included information about items stolen and the value of items taken from a series of stores belonging to the same corporation were testimonial in nature and their admission violated appellant's right to confront the witnesses against him, but error was harmless where co-defendants testified about the items stolen and there were videos and photos that the co-defendants identified of themselves and others stealing items.

Confrontation Clause. State v. Clifford, 2020-Ohio-5095 | 5th Appellate District | 10/28/20 In bench conviction of, inter alia, engaging in a pattern of corrupt activity, R.C. 2923.32(A) (1), admission of reports of stolen items that included information about items stolen and the value of items taken from a series of stores belonging to the same corporation were testimonial in nature and their admission violated appellant's right to confront the witnesses against him, but error was harmless where co-defendants testified about the items stolen, and there were videos and photos that the co-defendants identified themselves and others stealing items.

Evidence. State v. Brunson, 2020-Ohio-5078 | 8th Appellate District | 10/29/20 In conviction of, inter alia, aggravated murder, trial court did not err in concluding that the attorney-client privilege applied to an alleged co-conspirator's state's witness' statements to his trial attorney and his investigator during a break in his interview with the police that were recorded without the knowledge of the witness' attorney since the record does not clearly establish that he testified as to the contents of that communication at a motion to suppress hearing.

Evidence. State v. Sanders, 2020-Ohio-5081 | 8th Appellate District | 10/29/20 In conviction of, inter alia, involuntary manslaughter in a shooting death, trial court did not err in allowing a witness' testimony that took place more than a year after the shooting following the state's refreshing her recollection with a video of her conversation with police at the time of the shooting since she claimed not to remember telling police that defendant told her that he shot the victim, Evid.R. 612, and it did not constitute evidence subject to Evid.R. 803(5).

Sealing. State v. G.K., 2020-Ohio-5083 | 8th Appellate District | 10/29/20 Denial of application to seal records relating to dismissed charges was error where, although appellant was convicted of one charge that is not eligible to be sealed and appellant does not seek sealing of that conviction, appellant was exonerated of commission of the dismissed charges by DNA evidence, victim recanted her allegations, and

R.C. 2953.61 does not bar an application brought under R.C. 2953.52 since the conviction was not exempt from sealing under R.C. 2953.36; sealing may also be warranted pursuant to a court's exercise of inherent authority, Pepper Pike.

Self-representation. State v. Newman, 2020-Ohio-5087 | 8th Appellate District | 10/29/20 In conviction of numerous offenses, trial court did not err in permitting defendant to represent himself where court found his waiver of counsel was knowing and voluntary and, even though an issue of his competency to represent himself was raised, he refused to submit to a competency evaluation and an evaluation in a prior case had found him competent and, after questioning defendant, the court determined defendant was competent to represent himself based on his rational understanding of the proceedings against him.

Search. State v. Taylor, 2020-Ohio-5079 | 8th Appellate District | 10/29/20 In en banc determination of conflict between opinions, in conviction by plea of weapon offenses, trial court's denial of motion to suppress was not error since officers during a traffic stop had probable cause to search the car compartment based on the smell of marijuana emanating from the car that led to the discovery of marijuana and ammunition in the center console and also supported the disassembling of the dashboard to find a weapon; prior decision, 2020-Ohio-490, is vacated.

Sealing. State v. B.J., 2020-Ohio-5089 | 8th Appellate District | 10/29/20 Grant of application for expungement of six felony convictions was error since applicant is not an eligible offender under R.C. 2953.31(A)(1)(b) since she has four misdemeanor convictions and thus has more than "one felony conviction and one misdemeanor conviction" because the merger provision in R.C. 2953.31(A)(1)(b) does not apply to R.C.2953.31(A)(1)(a).

Juror misconduct. State v. Taylor, 2020-Ohio-5097 | 5th Appellate District | 10/29/20 In conviction of cocaine possession, trial court did not commit plain error by not dismissing a juror who had commented to another juror during a break in the trial that "[t]his is a hard case, isn't it?" where the court brought the two jurors into chambers separately and both responded that they had not formed or expressed any opinion or had made any decision on the case, and the juror who made the comment was made an alternate and did not participate in the deliberations.

Interpreter. State v. Kami, 2020-Ohio-5110 | 5th Appellate District | 10/29/20 In conviction by plea of petty misdemeanor OVI, R.C. 4511.19(G) (1)(a), trial court did not commit plain error in use of interpreter since the mere assertion of procedural error in the appointment of an interpreter is not sufficient where no evidence exists as to impropriety, mistakes or falsehoods by the interpreter, Razo, and defendant raised no objection to the "Appointment and Oath of Interpreter," filed in the trial court in compliance of R.C. 2311.14(B) and Sup.R. 88(I).

Double jeopardy. State v. Bolding, 2020-Ohio-5114 | 6th Appellate District | 10/30/20 In conviction by plea of drug trafficking, R.C. 2925.03, denial of motion to dismiss on double jeopardy grounds was not error since there were two separate and distinct offenses involving

separate evidence arising out of separate quantities of methamphetamines recovered by officers of different counties on separate dates at the same location, one offense occurring during a controlled buy by out of county officers and a separate offense arising from a search of the same premises that the controlled buy occurred by the officers from that county.

Plea withdrawal. State v. Leifheit, 2020-Ohio-5106 | 2nd Appellate District | 10/30/20 In conviction by plea of misdemeanor OVI, denial of motion to withdraw plea was not error since plea was validly made where trial court was not required to advise defendant of the effect of his plea on his ability to maintain a commercial driver's license because the court was only required to advise defendant that a guilty plea is a complete admission of guilt, Traf.R. 10(B) (1); claim of ineffective assistance of counsel is without merit since claim relied on matters outside the record and should have been raised in a petition for post-conviction relief.

Sentencing. State v. Reeder, 2020-Ohio-5107 | 2nd Appellate District | 10/30/20 In conviction by plea of aggravated possession of drugs, a fifth-degree felony, and possession of heroin, a fourth-degree felony, imposition of concurrent prison sentences of 12 months and 18 months respectively pursuant to R.C. 2929.13(B)(1)(b)(iii) was error since the court was required to impose community control because it failed to memorialize an orally-stated bond requirement that defendant fully cooperate with the probation department during the pre-sentence investigation that was the basis for the imposition of a prison sentence.

Sentencing. State v. Wallace, 2020-Ohio-5109 | 2nd Appellate District | 10/30/20 In conviction by plea of felonious assault, imposition of a prison sentence of a minimum of seven years and a maximum of ten and one-half years was not error where trial court considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and challenge to the constitutionality of the Reagan Tokes Act is without merit since this court of appeals has upheld the Act, finding it does not violate the separation-of-powers doctrine or the right to procedural due process, Barnes.

Plea. State v. Holley, 2020-Ohio-5104 | 2nd Appellate District | 10/30/20 In conviction by plea of carrying a concealed weapon, R.C. 2923.12(A)(2), state conceded trial court erred by not complying with Crim.R. 11(E) and R.C. 2937.07 in accepting defendant's plea by failing to inform defendant of the effect of the plea of guilty, no contest and not guilty, and appeal is not moot since there are unpaid court costs.

Ineffective assistance. State v. Russell, 2020-Ohio-5108 | 2nd Appellate District | 10/30/20 In conviction of eight counts of trafficking cocaine, defense counsel did not provide ineffective assistance by not objecting to state witness' testimony that implicated defendant's prior dealing in drugs since testimony was relevant to entrapment defense raised by defendant in order to show his predisposition to engage in drug offenses and was not unfairly prejudicial, and the fact that defense counsel failed to make any objections during state's case-in-chief did not demonstrate ineffective assistance since defendant does not identify anything specific that counsel should have objected to.

Free speech. State v. Towns, 2020-Ohio-5120 | 6th Appellate District | 10/30/20 In conviction of disclosure by a public official, R.C. 102.03(B), relating to defendant-sheriff's release of confidential child abuse reports, denial of motion to dismiss was not error since claim that statute unconstitutionally limits defendant's free speech is without merit since he held a position of trust as a county sheriff that made him privy to sensitive, confidential information that is not open to the public, and he had executed a document waiving his right to disclose the information he released from the county family services agency report.

Evidence. State v. Smith, 2020-Ohio-5119 | 6th Appellate District | 10/30/20 In conviction of felonious assault, any error by trial court in not permitting defendant to present a physician's testimony about complaining witness' memory issues or to permit defendant to cross-examine the complaining witness on her memory issues, Evid.R. 616(B), was not unduly prejudicial under Evid.R. 403 where defendant failed to demonstrate that his conviction depended on any memory issue of victim since defendant's own testimony established that he inflicted injuries on the victim, and also victim admitted to her memory issues.

Evidence. State v. Tunstall, 2020-Ohio-5124 | 12th Appellate District | 11/2/20 In conviction of, inter alia, murder, admission of other acts evidence, Evid.R. 404(B), that defendant was a gang member was not error where the evidence was relevant to the particular purpose for which offered, as well as relevant to an issue in dispute, Evid.R. 401(B), and the value of the evidence is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury, Evid.R. 403(A) and Smith, since the evidence was admissible to show motive and a plan for the shooting of an opposing gang member.

Judicial release. State v. Greene, 2020-Ohio-5133 | 3rd Appellate District | 11/2/20 Following 2015 conviction by plea of aggravated robbery and grant of judicial release in 2019 that was revoked in 2020 with the remainder of the five-year prison sentence re-imposed, claim that plea was void for failure of trial court to fully comply with Crim.R. 11(C)(2)(c) is without merit since appellant failed to file a direct appeal and is barred by res judicata from challenging a voidable sentence, Harper, and trial court also reserved the right to re-impose the remainder of the prison sentence for violation of the conditions of judicial release, R.C. 2929.20(K).

Discovery. State v. Brown, 2020-Ohio-5140 | 11th Appellate District | 11/2/20 Following convictions of defendants of cruelty to companion animals, violation of community control and imposition of an additional period of community control and stricter terms, trial court did not err by not permitting defendants' witness to testify as an expert where, although Crim.R. 16 did not technically apply to a hearing on an alleged community control violation, defendants requested information pursuant to Crim.R. 16 that the state provided, and the court ordered defendants to exchange their evidence with the state, but they failed to do so.

Plea. State v. Wasilewski, 2020-Ohio-5141 | 11th Appellate District | 11/2/20 In conviction by plea of second-degree felony attempted rape, R.C. 2923.02 and 2907.02, and third-degree felony gross sexual imposition, R.C. 2907.05, of defendant's 11 year-old autistic stepson, claim that plea was an Alford plea is without merit since defendant failed to claim his innocence at the plea hearing, but only at the sentencing hearing, and he failed to make a motion to withdraw his plea.

Jury instruction. State v. Flory, 2020-Ohio-5136 | 3rd Appellate District | 11/2/20 In conviction of domestic violence, R.C. 2919.25(A), trial court committed plain error in its incorrect and contradictory jury instructions on self-defense by indicating that defendant had the burden of proof to establish self-defense since R.C. 2901.05(B)(1) was amended prior to the incident that led to the charge in this case, and state had the burden of proof to demonstrate defendant was not acting in self-defense since defendant presented evidence "that tends to support" that she used the force in self-defense.

Ineffective assistance. State v. Gossman, 2020-Ohio-5135 | 3rd Appellate District | 11/2/20 In conviction by plea of rape of a child under 13 years-old, claim that defense counsel provides ineffective assistance by not having a mental health expert testify at the sentencing hearing is without merit since the defense decision to call or not call a mitigation witness is a matter of trial strategy, and counsel did raise the fact that defendant was suffering from mental health issues, including substance abuse, anxiety disorder and depression that were supported by the pre-sentence investigation report and by a prior competency hearing.

Intervention in lieu of conviction. State v. Sanders, 2020-Ohio-5153 | 5th Appellate District | 11/3/20 In conviction by plea of aggravated possession of drugs, trial court did not err by denying motion for intervention in lieu of conviction where defendant had a lengthy criminal history, had multiple opportunities on probation, had participated in substance abuse treatment programs while on probation, and in this case she failed to report while on bond and to appear on multiple occasions and tested positive for drugs, R.C. 2951.04(B)(1)-(10).

Post-conviction relief. State v. Jennings, 2020-Ohio-5154 | 10th Appellate District | 11/3/20 Following 2016 conviction by plea of vandalism, R.C. 2909.05, and imposition of jointly recommended six months prison term and three years optional post-release control (PRC) pursuant to R.C. 2929.19(B)(3)(c), (d) and (e) and no direct appeal was filed, denial of 2017 motion to vacate post-release control was not error since appellant's challenge to alleged improper imposition of PRC is barred by res judicata where appellant did not file a direct appeal challenging the imposition of PRC since any improper imposition of PRC was voidable, not void, Harper.

Miranda. State v. Nichols, 2020-Ohio-5157 | 10th Appellate District | 11/3/20 In prosecution of tampering with evidence and abuse of a corpse, grant of motion to suppress was error since trial court failed to adequately set forth its findings of fact, including credibility evaluations of all witnesses who testified at the suppression hearing, court of appeals cannot properly apply the Burnside directive that it determined, without

deference to the trial court, whether the facts satisfy the applicable legal standard of whether any or all of defendant's statements were the result of a custodial interrogation requiring Miranda warnings prior to the time the warnings were provided.

Sentencing. State v. Richards, 2020-Ohio-5159 | 1st Appellate District | 11/4/20 In conviction of fourth-degree felony trespass in a habitation, trial court erred by requiring defendant to serve a term of community control after imposing a prison term for the same offense and, although the term of community control is not void, it is voidable, Harper and, since defendant has successfully challenged in this appeal the trial court's action imposing that part of the sentence, that part of the sentence is vacated.

Speedy trial. State v. Banks, 2020-Ohio-5170 | 5th Appellate District | 11/4/20 In conviction by plea of, inter alia, burglary, denial of motion to dismiss on speedy trial grounds was not error because defendant did not comply with R.C. 2941.401 since state has no obligation to locate an incarcerated defendant with pending charges who never caused the requisite notice of imprisonment and request for final disposition to be delivered to either the prosecuting attorney or the court, Hairston.

Expert testimony. State v. Roan, 2020-Ohio-5179 | 8th Appellate District | 11/5/20 Conviction of three counts of rape was error since officer's testimony about the alleged victim's delayed reporting of the rape and the text messages between defendant and the alleged victim was improperly admitted at trial since it was an expert opinion regarding the consistency of statements the alleged victim and defendant made to officer when compared to their text messages, but officer was not qualified as an expert witness nor did state submit a written report pursuant to Crim.R. 16(K); convictions are reversed and case is remanded.

Contempt. Cleveland v. Bright, 2020-Ohio-5180 | 8th Appellate District | 11/5/20 While being arraigned for, inter alia, assault, judge found appellant in contempt, R.C. 2705.05, for rolling her eyes and saying a few undesirable words about and in front of the judge, for which appellant was fined and incarcerated for 15 days, judge erred by the additional imposition of community control sanctions since a trial court's inherent power to sanction for contempt does not include the power to impose community control sanctions.

Sealing. State v. T.S., 2020-Ohio-5182 | 8th Appellate District | 11/5/20 Grant of application for sealing of record of conviction of third-degree drug offense, R.C. 2925.03, was not error since applicant was eligible for expungement under R.C. 2953.31(A)(1) (b) because his misdemeanor convictions are not counted against him by operation of R.C. 2953.31(A) since the offenses are considered minor misdemeanors under state law, notwithstanding that the municipal offenses are considered fourth-degree misdemeanors where the distinction is not rationally related to a legitimate governmental interest and would deprive applicant of equal protection, State v. J.S.

Plea. [State v. Alvarez, 2020-Ohio-5183 | 8th Appellate District | 11/5/20](#) In conviction by plea of, inter alia, aggravated vehicular homicide, plea was validly made where trial court complied with Crim.R. 11(C) since Crim.R. 11(C)(2) does not require a trial court to inform defendant that by pleading guilty, he was waiving his right to appeal a jointly-agreed sentence under R.C. 2953.08(D)(1), and a trial court's duty to advise a defendant of the right to appeal does not arise until sentencing and thus has no effect on whether the defendant's guilty plea was validly made.

Transcript. [S. Euclid v. Silver, 2020-Ohio-5185 | 8th Appellate District | 11/5/20](#) In conviction of municipal traffic ordinances, judgment is affirmed since claim that denial of motion to suppress was error is not reviewable since defendant failed to file a transcript of the hearing on her motion to suppress, and thus the regularity of the trial court proceedings must be presumed and the judgment affirmed.

Sentencing. [State v. Hill, 2020-Ohio-5190 | 8th Appellate District | 11/5/20](#) Following 1988 conviction of, inter alia, capital aggravated murder that was affirmed, but death sentence was reversed and remanded for re-sentencing on that count and, on remand, trial court omitted the fact that appellant was found guilty by a jury, trial court did not err in its 2019 nunc pro tunc entry including that fact, and appellant's presence was not required since there is no dispute that the record in the original 1988 sentencing entry established that is precisely what happened, and thus the nunc pro tunc entry was not a re-sentencing, and defendant's presence was not required.

Jail-time credit. [State v. Koenig, 2020-Ohio-5192 | 8th Appellate District | 11/5/20](#) In conviction by pleas in two cases of felony drug possession and misdemeanor assault and imposition of concurrent sentences, state concedes that trial court erred by failing to give jail-time credit in the assault case, Fugate.

Judicial release. [State v. Watkins, 2020-Ohio-5203 | 10th Appellate District | 11/5/20](#) Following 2019 conviction by plea of trafficking in cocaine, grant of defendant's 2020 "emergency motion" for temporary relief from judgment based on his underlying health conditions heightening his risk for severe COVID-19 complications was error where treated by court of appeals as a grant of a motion for judicial release since defendant was ineligible for conventional judicial release under R.C. 2929.20 because he was serving a mandatory sentence and, although trial courts have jurisdiction under R.C. 2929.20(N) to release an offender serving a mandatory prison term, the record contains no discussion as to whether appellee could have secured judicial release pursuant to that provision.

Felonious assault. [State v. Yowpp, 2020-Ohio-5215 | 6th Appellate District | 11/6/20](#) Conviction of felonious assault and discharging a firearm into a habitation met the sufficiency and weight of evidence standards where there was sufficient circumstantial evidence that defendant was the person who victim-girlfriend told others was chasing her while she was attempting to escape him, that defendant was the same person who knocked on the door at the stranger's home shortly after the victim entered in an attempt to escape and that defendant fired shots into the home shortly thereafter, even if

no one saw him actually shoot and even if victim later recanted after receiving over a thousand jail calls from defendant.

Felonious assault. [State v. Hendricks, 2020-Ohio-5218 | 6th Appellate District | 11/6/20](#) Conviction of felonious assault, R.C. 2903.11(A) (1) and (D), and assault, R.C. 2903.13(A) and (C) (5), arising out of defendant's knocking down and hitting two police officers at a hospital while officers were attempting to admit him met the sufficiency and weight of evidence standards based on his attack on police officers where defendant acted knowingly as demonstrated by his actions toward the officers.

Identification. [State v. Green, 2020-Ohio-5206 | 2nd Appellate District | 11/6/20](#) In conviction of aggravated burglary, trial court did not err in denying motion to suppress victim's eyewitness identification where, although court found that officer's single-photo identification process was improperly suggestive, the identification was reliable where eyewitness victim had encountered defendant at two different times at her house on the day of the burglary, described him in detail and victim stated that she was "100% certain" the person in the photo was the person who robbed her, and the officer's failure to comply with R.C. 2933.83 did not require suppression since it was reliable.

Miranda. [State v. Pack, 2020-Ohio-5210 | 2nd Appellate District | 11/6/20](#) In conviction of illegal use of food stamps, trial court did not err in denying motion to suppress statements defendant made to a federal agent at a police station since defendant had been advised of his Miranda rights during a traffic stop in which drugs and a food-stamp voucher were found in the vehicle, he was taken to a police station where the agent asked him whether he understood his Miranda rights, defendant responded affirmatively and participated in the interview occurring within a couple of hours after the traffic stop, and he was in custody during the entire period after given the warnings.

Self-defense. [State v. Robinson, 2020-Ohio-5214 | 2nd Appellate District | 11/6/20](#) In conviction of assault, state demonstrated that defendant did not act in self-defense involving the use of non-deadly force against a bailiff during his attempt to execute an eviction since jury reasonably concluded beyond a reasonable doubt that defendant did not have reasonable grounds to believe and, an honest belief, even if mistaken, that she was in imminent danger of bodily harm where she assaulted bailiff as he entered the house after he repeatedly identified himself as a bailiff and displayed his patch, and defendant was no longer entitled to be present in another's premises.

Ineffective assistance. [State v. Laser, 2020-Ohio-5216 | 6th Appellate District | 11/6/20](#) In convictions in three cases of multiple offenses, including drug offenses, aggravated menacing and theft, claim of ineffective assistance of counsel is without merit where admission of hearsay and other acts evidence and counsel's failure to object to exhibits and to lay witness testimony providing expert testimony, if error, were harmless, and appellant has not demonstrated a reasonable probability exists that the court would have granted a motion to sever the trials had counsel filed a motion since the evidence in each case was simple and direct.

Ineffective assistance. [State v. Smith, 2020-Ohio-5241 | 5th Appellate District | 11/6/20](#) In conviction by plea of drug offenses, claim that defense counsel failed to inform defendant that a guilty plea precluded a challenge of the denial of a motion to suppress is without merit since defendant did not demonstrate he was prejudiced by the alleged ineffective assistance since he failed to demonstrate that he would have been successful in an appeal of the denial of the motion to suppress.

Zoning. [State v. Powlette, 2020-Ohio-5212 | 2nd Appellate District | 11/6/20](#) Conviction of minor misdemeanor failure of operating a bed and breakfast without a conditional-use permit was error since the amendment of the complaint by state improperly changed the offense from events that occurred before and after the dates in the complaint, and the prosecution also failed to prove beyond a reasonable doubt that defendant actually "used" his property as a "bed and breakfast" without a conditional-use certificate, even if defendant advertised it as a "bed and breakfast" since "intent is not operating."

Evidence. [State v. Jackson, 2020-Ohio-5224 | 3rd Appellate District | 11/9/20](#) In conviction of involuntary manslaughter, admission of other acts evidence, Evid.R. 404(B), was not error where admitted primarily to establish defendant's identity through his modus operandi, notwithstanding officer's testimony that defendant lived in a "problem" house associated with drugs, testimony of person that facilitated meeting between defendant and victim that he had bought drugs from defendant, officer's testimony of prior interaction with defendant and seeing him with a firearm, and Facebook photos showing defendant holding guns and displaying gang signs since defendant failed to demonstrate prejudice, and any error was harmless.

Aggravated robbery. [State v. Tenbrook, 2020-Ohio-5227 | 12th Appellate District | 11/9/20](#) Conviction of robbery and aggravated robbery that were merged as allied for sentencing met the sufficiency and weight of evidence standards where victim testified that defendant participated in an attack against him, resulting in numerous injuries to his head and body, with one of the attackers holding a gun to his head while defendant was standing nearby, and jury did not lose its way in making its credibility determinations.

Search. [State v. Fritz, 2020-Ohio-5231 | 12th Appellate District | 11/9/20](#) In conviction by plea of aggravated trafficking in drugs, denial of motion to suppress in part was not error where, following a traffic stop in which officer, after canine alerted to back seat area where defendant had been sitting, found drugs on defendant after he exited the car and found additional drugs during a search of backpack that had been in defendant's possession while in car, the fact that canine may have alerted to residual drug odor in car after defendant exited still provided probable cause for the search, and officer also had probable cause to search under the automobile exception.

Fair trial. [State v. Hennessey, 2020-Ohio-5232 | 12th Appellate District | 11/9/20](#) In conviction of OVI, trial court did not commit plain error by permitting a prosecutor to try the case after an assistant prosecutor heard recordings between

Criminal Law (continued)

defendant and his counsel where assistant prosecutor immediately distanced himself from case and had no other participation, prosecutor who took over case had no knowledge of what the assistant prosecutor had heard, and there is no indication in the record what information was overheard during the phone calls that would have resulted in a different outcome had the phone calls not been heard by the assistant prosecutor.

Right to counsel. State v. Brantweiner, 2020-Ohio-5235 | 11th Appellate District | 11/9/20 In consolidated cases of two defendants, conviction by plea of second-degree misdemeanor cruelty against companion animals, R.C. 959.131(D)(1) and (D)(2), defendant was not denied her Sixth Amendment right of effective assistance of counsel by the representation of defendant volunteer and defendant owner-operator of animal shelter where the two defenses did not result in one assigning blame to the other and both defendants had a common interest and, under R.C. 959.131(D)(2), custodians and caretakers may be held individually liable for violations, Manross.

Jury. State v. Bowers, 2020-Ohio-5167 | Supreme Court of Ohio | 11/10/20 In conviction of rape of a minor under the age of ten and imposition of a sentence of 25 years to life, court of appeals properly reversed the sentence where trial court made the finding in imposing the sentence that the victim was compelled to submit by force or threat of force since permitting a trial court to make a finding of force for the purpose of imposing a sentence under R.C. 2971.03(B)(1)(c) violates the Sixth Amendment because that factor must be made by the trier of fact, Alleyne and Apprendi.

Restitution. Centerville v. Knab, 2020-Ohio-5219 | Supreme Court of Ohio | 11/12/20 In conviction of making a false report to law enforcement, R.C. 2917.32(A)(3), and improper use of the 9-1-1 emergency system, R.C. 128.32, for purposes of restitution under R.C. 2929.28(A)(1), a municipality is not a "victim" when responding to a crime in its official capacity under Marsy's Law, Ohio Const., Art. I, Sec. 10a.

Education Law

Legislation. State ex rel. Citizens for Community Values, Inc. v. DeWine, 2020-Ohio-4547 | Supreme Court of Ohio | 9/24/20 Petition for writ of mandamus to compel respondents to disregard S.B. 120 and administer the Educational Choice Scholarship Program under the law as it existed prior to S.B. 120's passage is denied since relators' challenge asserted harm that supposedly arose from two-month delay of the start of current year's scholarship application process, but because of the passage of time, relators no longer have a legally cognizable interest in the outcome of this case, and intervening legislation has also rendered this cause moot.

Sunshine law. State ex rel. Jones v. Dayton Pub. Schools Bd. of Edn., 2020-Ohio-4931 | 2nd Appellate District | 10/16/20 In action where plaintiff-school board treasurer was terminated at a school board special meeting in violation of sunshine law and was awarded damages under R.C. 3313.22, trial court erred in denying attorney fees to plaintiff since the notice of the

special meeting did not inform the public of the meeting's true purpose in violation of R.C. 121.22, the board modified the agenda after the meeting, attempting to add facts not of record, and the award of attorney fees is not contingent on how egregious violations are nor the extent to which the action benefits the public.

Contract. Gucciardo v. Springfield Local School Dist. Bd. of Edn., 2020-Ohio-5038 | 6th Appellate District | 10/23/20 In teacher's administrative appeal of school board's decision not to renew his contract, trial court did not err in affirming decision of board where, although the board did not include an overall rating or rating for each evaluated category in its observation assessment, neither the collective bargaining agreement nor R.C. 3119.111 require such ratings, evaluator's assessment provided detailed explanations for the mixed assessment, and the board was not required to provide teacher with assistance to improve his performance, R.C. 3119.11.

Election Law

Referendum petition. State ex rel. Luonuansuu v. King, 2020-Ohio-4286 | Supreme Court of Ohio | 9/2/20 Petition for writ of mandamus to compel referendum petitions to be placed on the ballot for upcoming election is denied since relators failed to present evidence to establish even the most basic facts of their claims and documents submitted with their petition are not sufficient to entitle relators to relief with respect to any of the four petitions.

Nominating petition. State ex rel. West v. LaRose, 2020-Ohio-4380 | Supreme Court of Ohio | 9/10/20 Candidates' petition for writ of mandamus to compel secretary of state to accept their statement of candidacy and nominating petition for president and vice president and to certify their names for placement on the ballot in the upcoming election is denied since the nominating petition did not substantially comply with the requirements of R.C. 3513.261 where the candidates' original statement of candidacy did not match the copies of the statement of candidacy that were circulated with the various part-petitions.

Charter amendment. State ex rel. Syx v. Stow City Council, 2020-Ohio-4393 | Supreme Court of Ohio | 9/11/20

Charter review commission's petition for writ of mandamus to compel city council to vote on amendments to city charter and to issue ordinance certifying amendments to board of elections for placement on upcoming election ballot or a writ to compel board to accept proposed amendments directly from commission itself are denied on the basis of laches where despite having drafted for council a written memorandum providing legal opinions supporting petitioners' arguments, they did not file their complaint until three weeks later, which was an unreasonable delay.

Absentee ballots. Ohio Democratic Party v. LaRose, 2020-Ohio-4664 | 10th Appellate District | 9/29/20 In action in which state political party sought an injunction enjoining enforcement of secretary of state's interpretation of R.C. 3509.03 as prohibiting voters from making application for absentee ballot by electronic means, trial court erred in granting the preliminary injunction where, although statute does not prohibit delivery of applications

by electronic means, the secretary acted reasonably within his authority to direct methods of delivery, electronic transmission is vulnerable to cyber-attack, and timing of injunction disrupts status quo, which is against public interest.

Absentee ballots. Ohio Democratic Party v. LaRose, 2020-Ohio-4778 | 10th Appellate District | 10/2/20 In action where state political party sought injunctive relief against secretary of state's directive prohibiting county boards of elections from installing additional absentee ballot drop boxes at locations other than elections boards' offices, trial court erred in granting preliminary injunction against enforcement of the directive where, although secretary of state's interpretation of R.C. 3509.05 was not reasonable because statute neither prescribes nor prohibits ballot drop boxes at other locations, his directive does not violate the statute.

Tax levy reduction. State ex rel. Meyer v. Warren Cty. Bd. of Elections, 2020-Ohio-4863 | Supreme Court of Ohio | 10/9/20 Petition for writ of prohibition to prevent board of elections from placing tax levy reduction measures on ballot for upcoming election is denied since the plain language of R.C. 5705.261 requires that a petition for reduction call for only some designated reduction, which the petitions do, and there is no requirement for the size of the reduction so an argument that the requested reduction was so insignificant that it was absurd is without merit.

Employment Law

Discrimination. Tanksley v. Howell, 2020-Ohio-4278 | 10th Appellate District | 9/1/20 In court employee's action for race discrimination and retaliation following a one-day suspension for insubordination, summary judgment in favor of employers was not error where the employee violated the court's dress code and also a check-in and -out directive, which was sufficient to uphold the suspension, the employee failed to establish that employers' reliance on his violations were a pretext for discrimination, and the employers' notice of policy violation predated the employee's civil rights complaint and cannot serve as a basis for a retaliation claim, R.C. 4112.02, 2744.03.

Sanctions. E. Cleveland IAFF 500 v. E. Cleveland, 2020-Ohio-4295 | 8th Appellate District | 9/3/20 In city's appeal of award of sanctions to firefighters union in action where city failed to comply with temporary restraining order and preliminary injunction enjoining city from breaching terms of collective bargaining agreement pending arbitration, trial court did not err on remand in declining to reverse sanctions since the challenge to sanctions was barred by res judicata and city was not prejudiced when defendants-mayor and fire chief were no longer employed by the city and unable to testify at contempt hearing because they were automatically substituted by their replacements.

Appeal. Mick v. New Holland, 2020-Ohio-4475 | 4th Appellate District | 9/8/20 In employment dispute, village's appeal from trial court's decision awarding reinstatement and back pay to terminated employee on his claim filed pursuant to R.C. 737.19(B) is dismissed for lack of a final appealable order since the court did not determine the amount of back pay owed.

Testimony. Roty v. Battelle Mem. Inst., 2020-Ohio-4389 | 10th Appellate District | 9/10/20 In action by former employees who lost jobs as part of a reduction in force, claiming employment discrimination, trial court did not err in excluding employees' statistical expert's testimony that failed to consider independent variables that could influence the association between age and layoff rates where court followed precedent and employees concede that expert witness was unable to analyze data required by precedent without independent factor information, which employees failed to seek during discovery.

Discipline modification. Reading v. Fraternal Order of Police, 2020-Ohio-4558 | 1st Appellate District | 9/23/20 Reduction of police officer's termination to suspension by arbitrator is affirmed where officer was terminated without benefit of progressive discipline, the parties' collective bargaining agreement permitted police chief to depart from progressive discipline, but the CBA did not identify under what circumstances the chief would be justified in so doing, and that determination was left to the arbitrator; the arbitration award drew its essence from the CBA, and the arbitrator did not exceed his authority.

Public employee. Arnold v. Spencer Twp. Bd. of Trustees, 2020-Ohio-4706 | 6th Appellate District | 9/30/20 In former fire chief's breach of contract action to recover severance payment after city closed fire department, eliminating chief's job, trial court erred in granting chief's motion for summary judgment since he could not bring a claim for breach of contract against city because as a public employee he held his position as a matter of law rather than as a matter of contract.

Competitive exam. Cleveland Fire Fighters, Local 93 of the I.A.F.F. v. Cleveland, 2020-Ohio-4751 | 8th Appellate District | 10/1/20 In firefighters union's challenge to city's use of noncompetitive exam to fill high-level vacancies in fire division, trial court did not err in granting union's writ of mandamus specifying union's right to have vacancies in top ranks filled by competitive exam where terms of writ are not ambiguous or unclear, it specifies implementation of two separate exams for the two positions, and the court detailed how the city was to proceed under the writ; also, the union was not entitled to attorney fees since it did not show bad faith by city.

Contract. Frebes v. Am. Fam. Ins. Co., 2020-Ohio-4750 | 8th Appellate District | 10/1/20 In plaintiff-insurance agent's action against defendant-insurance company for breach of contract after his employment was terminated for poor performance, trial court did not err in granting defendant's motion for summary judgment where plaintiff failed to oppose defendant's motion, defendant's promise to subsidize difference between plaintiff's production and estimated value of his potential business, made at time of his transition from sales manager to agent, was not intended to continue indefinitely, and the promised subsidies continued beyond the specified period.

Arbitration. Copley-Fairlawn City School Dist. Bd. of Edn. v. Copley Teachers Assn., 2020-Ohio-4801 | 6th Appellate District | 10/7/20 In teachers union's grievance against school board alleging that the board had violated the

collective bargaining agreement by including sick and personal leave data on evaluations, trial court did not err in dismissing board's complaint for declaratory judgment and in granting union's petition to compel arbitration where the issue of arbitrability is reserved for the arbitrator to determine.

Reinstatement. State ex rel. Henderson v. New Richmond, 2020-Ohio-4875 | 12th Appellate District | 10/13/20 In police officer's action seeking reinstatement following his refusal to accept a demotion after his position was eliminated, trial court did not err in granting village's motion for judgment on the pleadings where adoption of the ordinance which eliminated officer's position was a legislative act and not an appealable administrative decision, and R.C. 737.17 does not limit the statutory authority of village council in making employment decisions with respect to village employees, Civ.R. 12(C).

State retirement program. Sherman v. Ohio Pub. Emps. Retirement Sys., 2020-Ohio-4960 | Supreme Court of Ohio | 10/22/20 In plaintiff-state employee's class action against defendant-state retirement system for reducing his health insurance subsidy after he was rehired by the state, while providing full subsidy to retirees re-employed outside the retirement system, appeals court did not err in ruling that plaintiff had stated a claim under state equal protection clause where defendant could identify its retirees re-employed outside the system without incurring additional costs, and defendant did not show that costs are greater for overseeing benefits for re-employed retirees than non-retired employees in the same job.

Arbitration. Rousseau v. Setjo, L.L.C., 2020-Ohio-5002 | 8th Appellate District | 10/22/20 In employee's wrongful termination action, alleging age and gender discrimination against car dealership, trial court did not err in finding that there was no binding contract between the parties requiring arbitration of claims since the arbitration agreement in question was invalid where only the employee had signed it, the language specified that the agreement was effective when all parties had signed it, and employee's failure to revoke his signature is irrelevant.

Discrimination/Retaliation. Huffman v. Sunbelt Rentals, Inc., 2020-Ohio-5070 | 1st Appellate District | 10/28/20 In employee's action against employer for retaliatory discharge and race discrimination, summary judgment for employer was not error since employee failed to establish a prima facie case where replacement with an individual not in a protected class occurred more than a year after discharge, employee's duties were spread among remaining employees, there was more than a two-month interval between employee's report of racial tension and his termination, and employee failed to support an inference that his report caused his termination.

Discrimination. Witzigreuter v. Cent. Hosp. Servs., Inc., 2020-Ohio-5088 | 8th Appellate District | 10/29/20 In plaintiff-terminated employee's race and gender discrimination action, summary judgment for employer was not error since plaintiff failed to make a prima facie case where termination was due to a reduction in force, employer did not hire an employee to fill plaintiff's position, but divided her work between three remaining employees, and

remaining employee who plaintiff identified as being in non-protected class was not similarly situated to plaintiff.

Environmental Law

Water testing. State ex rel. Yost v. Church of Troy, 2020-Ohio-4695 | 11th Appellate District | 9/30/20 In attorney general's (AG) action seeking preliminary injunction and penalties against church and pastor for noncompliance with state EPA public water testing regulations, judgment for AG was not error where pastor was an operator of church's water system under R.C. 6109.12 because he was responsible for supervision of operations and maintenance of facility, and there was evidence that he personally participated in decision-making regarding the water system and knowingly participated in violations of safe drinking water requirements.

Mandamus. State ex rel. AWMS Water Solutions, L.L.C. v. Simmers, 2020-Ohio-4798 | 10th Appellate District | 10/6/20 In relator-water company's action seeking to compel respondent-chief of state department of natural resources to take formal action on relator's proposal to resume operations of waste-fluid injection well, magistrate erred in determining that relator's complaint was barred by the doctrine of law of the case because the instant matter is not a subsequent proceeding from the prior decision, but magistrate's decision denying writ of mandamus is adopted where relator has no legal right to relief requested, and mandamus may not be used to collaterally attack the prior judgment.

Estate Planning, Trust and Probate Law

Concealment of assets. In re Estate of Jackson, 2020-Ohio-4334 | 6th Appellate District | 9/4/20 In probate proceeding wherein the plaintiffs-executors of estate filed a complaint for concealment of assets alleging that the defendant was in possession of real and personal property which were estate assets, the trial court did not err in finding the defendant guilty of contempt for failure to comply with the court's order to re-convey parcels of real property and collected rent payments pursuant to the prior judgment entry, R.C. 2109.52.

Jurisdiction. In re Guardianship of Siman, 2020-Ohio-4472 | 8th Appellate District | 9/17/20 In daughter-guardian's action to compel return of funds to guardianship account from decedent's estate where funds were removed from decedent's estate by son-executor, trial court lacked jurisdiction to grant motion to compel since daughter could complete final accounting without return of funds and, once guardianship ceased to exist, the court retained jurisdiction only for the limited purpose of settling guardian's final accounting, R.C. 2101.24(A).

Name change. In re Change of Name K.S.G. to K.S.G.-B., 2020-Ohio-4515 | 3rd Appellate District | 9/21/20 Granting mother's petition to change child's surname from that of father's surname to a hyphenated surname which included both father's and mother's surnames was not error since the court considered all the Willhite factors, including the effect of the name change on the preservation and development of child's relationship with each parent, R.C. 2717.01(A).

Arbitration. Hughes v. Hughes, 2020-Ohio-4653 | 10th Appellate District | 9/29/20 In action alleging that co-trustee of late mother's trust committed a material breach of trust, resulting in arbitration award in favor of beneficiaries, trial court did not err in denying co-trustee's motion to vacate arbitrator's decision where co-trustee failed to provide for payment of estate taxes or otherwise plan for payment of taxes and failed to promptly distribute mother's interest in bank to the other beneficiaries.

Adoption. In re J.G., 2020-Ohio-4701 | 6th Appellate District | 9/30/20 In great-grandparents' petition for adoption, trial court erred by stating that the hearing would be dedicated to the issue of whether children's services agency unreasonably withheld its consent to adoption but then denied great-grandparents' adoption petition on reasoning that a new placement would not be in the children's best interest where great-grandparents relied on the procedure expressly announced by the court, and case is remanded for grandparents to present evidence about best interest.

Frivolous conduct. O'Toole v. Hamman, 2020-Ohio-4753 | 8th Appellate District | 10/1/20 In sibling dispute regarding disposition of mother's estate, trial court did not err in imposing sanctions against defendant under Civ.R. 11 and R.C. 2323.51(A) where defendant had no evidentiary support for his claims that administrator had breached her duties or that siblings engaged in money laundering or hid assets, defendant had no contract for legal services with siblings and had no grounds to charge them attorney fees, and he could only have raised his claims in bad faith.

Arbitration. Hughes v. Hughes, 2020-Ohio-4882 | 3rd Appellate District | 10/13/20 In arbitration between brothers to resolve trust and stockholder disputes, trial court did not err in denying plaintiff-brother's motion to vacate arbitration award regarding allocation of brothers' voting rights where the award was based on arbitrator's interpretation and application of the restated irrevocable stockholder's agreement and proxy rather than the terms of the trust agreement, and arbitrator did not purport to overrule trial court's decision granting preliminary injunction requested by plaintiff.

Reopen estate. In re Estate of Moritz v. Ohio State Univ., 2020-Ohio-5012 | 5th Appellate District | 10/20/20 Denial of application to reopen estate of donor of gift to state university was not error where application claimed that university misused funds contributed pursuant to gift agreement, but the gift agreement was executed during donor's lifetime and was not part of his estate, and the gift agreement did not retain any right to oversight or enforcement for the donor, his heirs, fiduciary or any other personal representative.

Testamentary capacity. Webb v. Anderson Children Trust, 2020-Ohio-4975 | 1st Appellate District | 10/21/20 In sister's action challenging decedent-mother's opening of new IRA account and designation of brother as sole beneficiary of IRA, it was not error to rule that mother had the testamentary capacity to execute the transaction where, inter alia, mother initiated

contact with financial advisor and met with him independently, her selection of brother as beneficiary was not inconsistent with one of mother's prior estate plans, and psychologist's opinion about mother's dementia relied in part on examination a year after mother executed the transaction; the test of testamentary capacity can also be used as a standard for mental capacity to execute a contractual beneficiary designation.

Adoption. In re Adoption of E.H.D., 2020-Ohio-5014 | 5th Appellate District | 10/21/20 Denial of mother's motion to dismiss stepmother's petition for adoption was not error since mother was served with notice that the petition was filed, but she did not file objections within 14 days pursuant to R.C. 3107.11, her argument that she was also entitled to be served with a copy of the petition itself rather than just notice is meritless, and the 14-day period to object is not unconstitutional.

Administrator. In re Estate of Williams, 2020-Ohio-5064 | 10th Appellate District | 10/27/20 In dispute between mother of decedent, who died intestate, and his ex-wife about who should be appointed administrator of his estate, trial court did not err in appointing ex-wife as administrator after finding that decedent's minor daughter was the only next of kin and the only person entitled to inherit from decedent under laws of intestacy, and because she is a minor, no individual had priority to serve as administrator, decedent's ex-wife filed first application, she was a suitable person who resides in Ohio, and her appointment did not contravene state statute or longstanding precedent, R.C. 2113.06(A).

Jurisdiction. DeChellis v. Estate of DeChellis, 2020-Ohio-5111 | 5th Appellate District | 10/29/20 Denial of plaintiffs' Civ. R. 60(B) motions to vacate judgment finding them guilty of concealing assets belonging to defendant-estate was not error, and plaintiffs' argument that probate court lacked subject matter jurisdiction was meritless since plaintiffs' assertion that money at issue was an inter vivos gift had no impact on probate court's jurisdiction to hear estate's claim under R.C. 2109.50.

Adoption. In re Adoption of J.F., 2020-Ohio-5132 | 3rd Appellate District | 11/2/20 In stepfather's petitions to adopt children, trial court did not err in finding consent of father was required where the court found father's testimony to be credible that he had justifiable cause for failing to provide more than de minimis contact with children for a year preceding the filing of adoption petitions because he was homeless and had no way to receive mail, and mother had changed her address and phone number and blocked him from social media access, R.C. 3107.07(A).

Assets. Estate of Grossman, 2020-Ohio-5236 | 11th Appellate District | 11/9/20 In decedent's daughters' dispute about whether cash in decedent's leased safety deposit box was an asset of the estate or property of appellant-daughter, trial court did not err in finding that language of box's lease dictated that ownership of the lease did not affect the title to any contents of the box, and appellant did not make a claim that she placed money in the box or that decedent intended to create joint tenancy with a right of survivorship in contents of the box.

Prohibition. A.S. v. Gold, 2020-Ohio-4309 | 8th Appellate District | 9/2/20 Petition for a writ of prohibition, asserting that the court lacks jurisdiction to preside over hearing regarding motion to modify shared parenting, is sua sponte dismissed on reasoning that the court has basic statutory jurisdiction to preside over and adjudicate divorce action and further determine parenting rights, R.C. 3105.01, petitioner has an adequate remedy at law through direct appeal once the judge has adjudicated the pending divorce proceedings and determined parental rights, and petitioner has failed to demonstrate that the judge is about to exercise judicial or quasi-judicial authority.

Custody. Badescu v. Badescu, 2020-Ohio-4312 | 8th Appellate District | 9/3/20 In divorce action in which mother relocated to another state, trial court did not err in naming husband the residential parent and legal custodian of child where the court specifically considered each best interest factor in R.C. 3109.051, the husband was found to be more likely to facilitate parenting rights and visitation of wife, the wife's testimony that she did not agree to purchase the home and raise the child there was not credible, and the inability to make joint decisions makes shared parenting unworkable, R.C. 3109.03 and 3109.04.

Spousal support. Bailey v. Bailey, 2020-Ohio-4333 | 6th Appellate District | 9/4/20 In divorce action spousal support dispute, trial court erred in declining to retain jurisdiction to modify eight-year spousal support award in the future should husband's or wife's circumstances change since the parties are in their early fifties and economic uncertainties could cause husband's income to vary greatly in the coming years.

Spousal support. Schneider v. Schneider, 2020-Ohio-4326 | 2nd Appellate District | 9/4/20 In spousal support dispute following dissolution of marriage, trial court did not err in finding that the husband retired from government service, triggering a provision in the separation agreement requiring husband to make monthly payments to ensure that wife received a certain level of monthly income, since there is no doubt that the husband retired when he stopped working and began receiving pension benefits.

Civil protection order. Wegman v. Ashton, 2020-Ohio-4330 | 2nd Appellate District | 9/4/20 Granting a petition for a civil stalking protection order was not error where the defendant appeared at the plaintiff's home on multiple occasions and the defendant's escalation in behavior brought on mental distress, the defendant knew the plaintiff did not want contact with her and, even though the plaintiff's mental distress was not incapacitating or debilitating, it met the requirements in R.C. 2903.211.

Civil protection order. Alomari v. Almajali, 2020-Ohio-4349 | 12th Appellate District | 9/8/20 In case where husband and wife each filed petitions for domestic violence civil protection orders, resulting in issuance of order in favor of wife, it was not error for court to decline to provide findings of fact and conclusions of law since the temporary allocation of parental rights in a protection-order proceeding is not regarded as a custody proceeding that is subject to the requirements set forth in Civ.R. 52.

Child support. Grover v. Dourson, 2020-Ohio-4353 | 12th Appellate District | 9/8/20 In divorce action, it was error to order husband to maintain life insurance policies to secure his child support obligation since obligation terminates administratively on obligor's death, R.C. 3119.88(A)(1), and provision that extends child support obligation beyond death is void; also, the order allows children to receive more income from insurance than support they would have received if father remained alive, and the order would subject the distribution of insurance proceeds to approval of wife and her counsel.

Civil protection order. Morrison v. Morrison, 2020-Ohio-4358 | 11th Appellate District | 9/8/20 Issuing a domestic violence civil protection order in favor of wife against husband was not against the weight of evidence since the evidence supports the inference that by driving into wife's lane, husband used his vehicle as a threat of force, placing her in fear of imminent serious physical harm, R.C. 3113.31(A).

Jurisdiction. In re M.R.F.-C., 2020-Ohio-4400 | 2nd Appellate District | 9/11/20 In divorce action where court in another state accepted jurisdiction over custody matter, trial court did not err in finding that it lacked continuing jurisdiction as the children's home state where none of the parties resided in Ohio and wife did not establish residency requirements by returning to Ohio just prior to filing a motion seeking modification of the original Ohio custody order, R.C. 3127.15(A) and 3127.16.

Property division. Anderson v. Anderson, 2020-Ohio-4415 | 12th Appellate District | 9/14/20 In divorce action where husband disputed division of restricted stock, trial court did not err in dividing the stock units equally between the parties where, although the stock was unvested and the future value was difficult to ascertain, it was granted to the husband during the marriage and is marital property and, even if husband provided evidence that the stock was subject to conditions and susceptible to forfeiture, the character of restricted stock units as marital property is not changed.

Civil protection order. J.M. v. L.J., 2020-Ohio-4419 | 9th Appellate District | 9/14/20 In divorce action where husband sought termination of domestic violence civil protection order, trial court erred in modifying the protection order where there is no evidence that wife admitted at termination hearing that she did not suffer physical harm during prior incident, but the alleged admission was the primary basis upon which the court determined it was appropriate to shorten the duration of the protection order, R.C. 3113.31.

Appeal. DeGrant v. DeGrant, 2020-Ohio-4425 | 11th Appellate District | 9/14/20 In divorce action resulting in a judgment entry incorporating husband's submission of changes to shared parenting plan, wife's appeal is dismissed for lack of jurisdiction where the issue of child support remained pending on remand and, although the judgment entry was not denoted as temporary or interlocutory, it did not include the "no just reason for delay" language required by Civ.R. 54(B).

Property division. Weber v. Devanney, 2020-Ohio-4450 | 9th Appellate District | 9/16/20 In divorce action, trial court erred finding wife in contempt for failure to pay mortgage and ordering her to reimburse husband for mortgage payments where, under prior order, magistrate

mistakenly omitted assignment of mortgage payments to either party, and express language in wife's column of exhibit indicates the obligation to pay mortgage should have been in husband's column.

Appeal. Florenz v. Omalley, 2020-Ohio-4487 | 2nd Appellate District | 9/18/20 In respondent's appeal of issuance of domestic violence civil protection order against him, trial court's judgment is affirmed, and it is presumed that the evidence supported magistrate's findings where respondent failed to file objections as required by Civ.R. 65.1 or a transcript of the full hearing before the magistrate.

Civil protection order. Porter v. Porter, 2020-Ohio-4504 | 12th Appellate District | 9/21/20 Granting wife's petition for domestic violence civil protection order against husband on basis of wife's testimony about multiple acts of violence was not error where, although both parties had credibility issues, wife's testimony concerning her injuries did not require corroborating eyewitness testimony or medical evidence to meet her burden of proof, and wife's one-month delay in filing petition after latest event did not show an absence of fear of domestic violence, R.C. 3113.31.

Appeal. Mallikarjunaiah v. Shankar, 2020-Ohio-4508 | 12th Appellate District | 9/21/20 In divorce action in which husband filed untimely objections to magistrate's decision vacating order for reunification counseling, trial court's adoption of magistrate's decision was not plain error where husband failed to submit transcript of hearing and was unable to demonstrate any error on which his appeal was based, Civ.R. 53(D)(3).

Intervention. C.H. v. J.H., 2020-Ohio-4733 | 7th Appellate District | 9/24/20 In divorce action where wife sought reallocation of parental rights, trial court erred in denying grandmother's second motion to intervene where grandmother, who was awarded primary custody of children in the divorce decree, made a prior motion to intervene pursuant to Civ.R. 75(B)(3), which was granted, making her a party defendant, and trial court failed to serve her with copy of wife's motion and the notice of hearing.

Custody. Mullaji v. Mollagee, 2020-Ohio-4618 | 9th Appellate District | 9/28/20 In divorce action where husband sought shared parenting time with child residing out of the country with mother, trial court erred in sua sponte revising the parenting plan proposed by husband without following the procedure described in R.C. 3109.04(D), and the error was not harmless given the potential interplay between trial court's decree and foreign court's conditions attached to its order for return of child pursuant to the Hague Convention.

Jurisdiction. Eddy v. Eddy, 2020-Ohio-5020 | 7th Appellate District | 9/28/20 Dismissal of wife's divorce complaint by Ohio trial court after husband had earlier filed a dissolution action in Florida was error whether Ohio court based its ruling on the jurisdictional priority rule, which applies only to intrastate concurrent jurisdiction issues, or on the forum non conveniens doctrine, since the Florida court determined that it did not have personal jurisdiction over wife.

Appeal. Haddox v. Haddox, 2020-Ohio-4673 | 9th Appellate District | 9/30/20 In appeal by both parents from trial court's ruling in child support

dispute, neither parent stated with particularity all grounds for objection to magistrate's decision and failed to preserve the issues now raised on appeal, and they did not argue plain error, so trial court's judgment is affirmed without considering arguments.

Magistrate's decision. Durastanti v. Durastanti, 2020-Ohio-4687 | 1st Appellate District | 9/30/20 In wife's action seeking a domestic violence civil protection order (DVCPPO) against former husband, trial court erred in rejecting magistrate's denial of order since a proceeding for DVCPPO under R.C. 3113.31 implicates Civ.R. 65.1, which limits review of magistrate's decision for defects on its face and does not provide for findings of fact and conclusions of law, and here the court initially adopted magistrate's denial, demonstrating no defect on decision's face to trigger an objection; case is remanded for court to apply the appropriate standard under Civ.R. 65.1.

Child support. Degrell v. Degrell, 2020-Ohio-4760 | 5th Appellate District | 9/30/20 In dissolution action where husband sought change of child support, trial court's judgment declining to modify his child support obligation to reduce his arrearage retroactively to the date when he requested agency to modify obligation or the date when he filed motion in out-of-state court to modify obligation is affirmed where father failed to provide a transcript and he agreed to date of retroactive modification, and husband's responsibility to reimburse wife for childcare expenses under original dissolution agreement was a separate obligation and he must seek modification in appropriate forum.

Civil protection order. Straight v. Straight, 2020-Ohio-4692 | 11th Appellate District | 9/30/20 In dissolution action where wife obtained a civil protection order against husband, trial court erred in not giving husband an additional four days to remove his personal property, conditioned upon law enforcement presence, where deputy sheriff stated that he observed the condition of the property and thought that four additional days were necessary, and there was no conflicting evidence.

Child support. Million v. Million, 2020-Ohio-4849 | 2nd Appellate District | 10/9/20 In divorce action where wife sought modification of child support for adopted child, trial court did not err in ruling that adoptive assistance stipend checks that parties received should not be used to justify a deviation from the child support computation schedule; those checks should be treated as analogous to Social Security benefits received by a disabled child because the adoption stipends are for the benefit of the child for child's special needs and not for the parent, R.C. 3119.23.

Child support. Schwieterman v. Schwieterman, 2020-Ohio-4881 | 3rd Appellate District | 10/13/20 In divorce action where wife disputed calculation of child support, trial court's determination that wife was voluntarily underemployed was not error since wife is a nurse who is capable of working full-time, yet was working less than 10 hours a week; also, funds that wife transferred from an account that had been generating returns to a loan to her parents with no return could be imputed to wife as a source of potential cash flow, R.C. 3119.01.

Relief from judgment. Whited v. Whited, 2020-Ohio-5067 | 4th Appellate District | 10/19/20 In divorce action in which magistrate issued a QDRO to implement division of husband's pension, it was not error to deny husband's Civ.R. 60(B) motion seeking to prevent operation of the QDRO, asserting newly discovered evidence about wife's criminal conduct against minor child, since the motion for relief was not timely where it was filed 20 years after divorce judgment and 16 years after husband learned of wife's criminal conduct; the QDRO was not a judgment, and its date was not a basis for determining the timeliness of the Civ.R. 60(B) motion.

Property division. Irvin v. Eichenberger, 2020-Ohio-4962 | 10th Appellate District | 10/20/20 In second appeal of divorce decree in which husband disputed the equitable rather than equal distribution of marital assets, trial court did not err on remand in its distribution where the court is not required to consider disparity between Social Security benefits in making equitable distribution, and wife's retirement account was considered marital property but was properly assigned to wife as equitable distribution in consequence of husband's significant and continuing misconduct.

Contempt. Mayer v. Mayer, 2020-Ohio-4993 | 8th Appellate District | 10/22/20 In divorce action where wife alleged husband's noncompliance with divorce decree, trial court did not err in finding husband in contempt and in awarding wife attorney fees where a depleted health savings account balance did not obviate husband's obligation to reimburse wife's medical bills, wife's testimony regarding efforts to reduce cable bill was found to be credible, wife's delay in providing tax analysis had no adverse impact, and award of attorney fees was limited to successful issues in wife's motion, R.C. 3105.73.

Contempt. Sullivan v. Sullivan, 2020-Ohio-5036 | 2nd Appellate District | 10/23/20 In divorce action, trial court did not err in finding husband in contempt for failure to comply with spousal support obligation where he had not paid wife the required amount despite his belief to the contrary and the fact that he had made some payments since intent to violate the order need not be shown; also, trial court did not err in ruling in favor of wife on husband's motion to find wife in contempt for failing to cooperate with parenting time since daughter had turned 18 years-old and the issue was moot.

Child/Spousal support. Gaffney v. Gaffney, 2020-Ohio-5051 | 12th Appellate District | 10/26/20 In divorce action where husband disputed the calculation of spousal and child support, trial court's award of assets was not error and did not constitute double dipping because the stocks and stock options that constituted marital property were divided equally, and the adopted tiered support model, as recommended by husband, albeit at different amounts than he proposed, was related to husband's base salary and a percentage of future incentive pay he would receive, R.C. 3105.18(C)(1).

Spousal support. Spillane v. Spillane, 2020-Ohio-5052 | 12th Appellate District | 10/26/20 In divorce action where husband disputed award of spousal support to wife, trial court did not err in declining to impute income to wife where wife's

testimony concerning her education and job prospects was reasonable and did not lead to a finding that she was voluntarily underemployed, husband's future bonuses were appropriately included in the calculation, and the court addressed the tax consequences of the spousal support award, as required by R.C. 3105.18.

Spousal support. Hunley v. Hunley, 2020-Ohio-5053 | 12th Appellate District | 10/26/20 In divorce action involving a longstanding marriage in which the parties had owned a business but were currently employed elsewhere, trial court did not err in determining spousal support award to wife since it properly applied the provisions of R.C. 3105.18(B) where it considered the best evidence of the parties' earning ability to be their current income, properly used FinPlan software to assist in making its award, and appointed a receiver to dissolve parties' business.

Civil protection order. Horne v. Stafford, 2020-Ohio-5073 | 5th Appellate District | 10/26/20 Issuance of domestic violence civil protection order is affirmed on reasoning that petitioner was fearful of respondent and was suffering from high levels of anxiety and fear of retaliation resulting from incident in which respondent shoved petitioner against wall, kicked her and choked her, and the fact that incident occurred a year earlier did not eliminate the need for the order where petitioner had been covered by a criminal temporary protection order and five days after it expired, petitioner filed instant petition, R.C. 3113.31.

Spousal support. Lichtenstein v. Lichtenstein, 2020-Ohio-5080 | 8th Appellate District | 10/29/20 In divorce action, trial court erred in determining child support and in ordering wife to pay some of husband's attorney fees where the court improperly deferred to magistrate without conducting an independent review, and the court erred in denying as moot wife's motions to set aside magistrate's decision and modify temporary support because there is a question as to whether temporary support should have continued from date of final divorce hearing until court issued the final divorce decree and whether it should have been modified.

Custody. Mosser v. Mosser, 2020-Ohio-5122 | 4th Appellate District | 10/26/20 In divorce action where husband sought reallocation of parental rights giving him sole custody of child, trial court did not err in granting termination of existing custody order and designating husband as residential parent and legal custodian where wife agreed to the court's order and filed no objections to the decision, none of her arguments on appeal set forth how she was prejudiced by alleged errors of trial court, and she failed to show that guardian ad litem was biased in her investigation and reporting, Civ.R. 53(D)(3).

Civil protection order. Latz v. Latz, 2020-Ohio-5139 | 4th Appellate District | 11/2/20 Denial of father's petition for a domestic violence civil protection order for parties' five minor children was not error since evidence did not show that mother's conduct created a risk to any child's health or safety where, inter alia, no health condition was induced by mother's actions and no child incurred any physical injury in helping to restrain mother, suggesting that mother took care to keep the children out of her arguments with father, R.C. 3113.31.

Custody. A.O. v. R.O., 2020-Ohio-5198 | 10th Appellate District | 11/5/20 In divorce action in which husband disputed divorce decree's allocation of custody, judgment is affirmed since granting wife sole legal and residential custody of children was in children's best interest where, inter alia, children's mental health issues seemed to be exacerbated by their relationship with father, he was delinquent in paying child support, he had previous assault convictions involving wife or other women, and his unsupported opinions are insufficient to demonstrate error on appeal.

Attorney fees. Ross v. Ross, 2020-Ohio-5237 | 11th Appellate District | 11/9/20 In dissolution action where wife sought enforcement of husband's obligation to make payments pursuant to separation agreement, trial court did not err in awarding attorney fees to wife under R.C. 3105.73(B) but did err in its calculation of the fees related to preparation, filing and litigation of wife's motion since a portion of the fees arose from work performed prior to the filing of the motion.

Spousal support. Miller v. Miller, 2020-Ohio-5262 | 8th Appellate District | 11/12/20 In divorce action finding husband in contempt for failing to pay spousal support obligation, even though he argued that he was unable to afford the obligation on the basis of his yearly income, trial court did not err in setting purge amount where husband's income had never been sufficient to satisfy the spousal support to which he agreed, much less the purge condition at issue, and his status had not changed; also, award of attorney fees to wife was error since she did not establish the reasonableness of the fees and their relation to the contempt proceedings, R.C. 3105.18(G).

Government/Administrative

Zoning. Stumpff v. Riverside Bd. of Zoning Appeals, 2020-Ohio-4328 | 2nd Appellate District | 9/4/20 Affirming administrative decision that property owner violated zoning code by operating an automobile salvage yard on his property is affirmed since owner did not prove by a preponderance of evidence that his use of the property was a continuing, legal, nonconforming use of property where, inter alia, there was testimony that the property had not been used as an automobile salvage yard prior to enactment of zoning ordinances, R.C. 713.15.

Bill payment. Williams v. Dayton Water, 2020-Ohio-4332 | 2nd Appellate District | 9/4/20 In plaintiff's action claiming that city water department should have accepted international bills of exchange as payment for water bills, trial court did not err in granting city's motion to dismiss since the self-prepared bills of exchange purportedly created under the redemption theory were not legal tender and 12 U.S.C. 95a, on which the plaintiff relies, is no longer valid.

Open Meetings Act. State ex rel. Ames v. Portage Cty. Bd. of Comms., 2020-Ohio-4359 | 11th Appellate District | 9/8/20 Petition for writs of mandamus challenging waste management district board's use of consent agendas on the basis that the resolutions contained were not individually voted on and approved, allegedly in violation of the Ohio Meetings Act, R.C. 121.22, are denied since the items contained in the consent agendas are stated, motions and votes are indicated, and the subject matter is accessible to the public.

Water/sewer district merger. In re Henry Cty. Regional Water & Sewer Dist., 2020-Ohio-4341 | 3rd Appellate District | 9/8/20 Granting petition of water and sewer district seeking judicial approval of district's decision to merge with another water and sewer district was error and case is remanded to dismiss petition since petitioner-district sought relief beyond what is required by statute, the petition was not properly before the trial court, and petitioner sought relief outside of what was specifically authorized by the other district's board of trustees, R.C. 6119.06(Y).

Zoning. Lusardi v. Caesarscreek Twp. Bd. of Zoning Appeals, 2020-Ohio-4401 | 2nd Appellate District | 9/11/20 In action where plaintiffs sought zoning approval to host agritourism activity on their farm property, granting an application as to corn maze and hayrides and denying application as to celebratory events such as weddings is affirmed where the proposal relating to celebratory events was for a use with an incidental agricultural theme rather than an agricultural activity pursuant to R.C. 901.80(A)(2), and non-agriculture based business is not allowed on agricultural zoned property.

Frivolous conduct. Ritzler v. Arcadia, 2020-Ohio-4416 | 3rd Appellate District | 9/14/20 After settlement of action for breach of reasonable-water-rate contract that had been filed when it was discovered that water meter was reading about 2.35 times higher than actual amount used and village had filed a motion for summary judgment arguing sovereign immunity, trial court did not err in denying plaintiffs' motion for attorney fees, asserting that village engaged in frivolous conduct, since the court properly ruled that village's frivolous conduct did not rise to the level of willful or intentional misconduct that would satisfy Civ.R. 11 sanctions.

Zoning. Lakemore v. Schell, 2020-Ohio-4453 | 9th Appellate District | 9/16/20 In village's action seeking declaratory judgment and related relief against property owner alleging that he violated zoning code by operating a vehicle repair business where property owner filed a counterclaim for writ of mandamus to order village to issue a building permit for construction of garage on his property, trial court did not err in granting village judgment on the pleadings on counterclaim where the parties had reached a settlement agreement that governed construction of garage on the property and addressed the process for obtaining permits required to complete that project, Civ.R. 12(C).

Immunity. Cleveland Elec. Illum. Co. v. Cleveland, 2020-Ohio-4469 | 8th Appellate District | 9/17/20 In plaintiff-electric company's negligence action against defendant-city for damage to plaintiff's property during excavation, denial of defendant's motion for summary judgment, claiming governmental immunity, was not error where defendant's excavation to maintain municipal water supply was a proprietary function pursuant to R.C. 2744.02(B), defendant had a duty to inform itself of utility lines before excavating, and there are genuine issues of material fact regarding breach of duty and cause of damage.

Appropriation. State ex rel. AWMS Water Solutions, L.L.C. v. Mertz, 2020-Ohio-4509 | Supreme Court of Ohio | 9/23/20 Granting summary judgment to respondents-

state department and related respondents in mandamus action seeking to compel respondents to commence appropriations proceedings was error since there is a genuine issue of material fact whether respondents' suspension of relators' operation of saltwater-injection well constituted a total taking by depriving relators of all economically beneficial use of their leasehold.

Zoning. 3717 E. Cleveland Rd., L.L.C. v. Berlin Twp. Zoning Bd. of Appeals, 2020-Ohio-4604 | 6th Appellate District | 9/25/20 In administrative appeal of zoning board's denial of zoning application seeking enlargement of a nonconforming use, trial court erred in reversing board's denial since court failed to apply zoning provision that expressly prohibited expansion of nonconforming use where such provisions have generally been upheld and the interpretation of the law by the board was reasonable and presumed to be valid, R.C. 2506.04.

Nuisance. State ex rel. Givens v. Shadyside, 2020-Ohio-4826 | 7th Appellate District | 9/28/20 In case in which code administrator of village sent letter to property address stating that the property was a nuisance and that abatement measures must be undertaken, dismissal of property owners' petition for writ of mandamus is reversed since there is no evidence that the village fulfilled the requirements for proper service of the requisite notice under village's ordinances.

Immunity. Tasse v. Marsalek, 2020-Ohio-5084 | 8th Appellate District | 10/29/20 In plaintiffs' negligence action against defendants-city and animal control officer for injuries sustained in a dog attack when plaintiffs docked their boat on the river, trial court erred in denying defendants' motion to dismiss where plaintiffs failed to establish an exception to political subdivision immunity under R.C. 2744.02(B), and the dog bite statute, R.C. 955.22, does not expressly impose civil liability on an animal control officer or satisfy the immunity exception for employees.

Zoning. Colerain Twp. Bd. of Trustees v. Bench Billboard Co., 2020-Ohio-4684 | 1st Appellate District | 9/30/20 In township's action for an injunction and related relief to prevent billboard company from advertising on benches that allegedly violated zoning regulations, trial court did not err in granting summary judgment as to township's request for injunctive relief where defendant never sought or received certificates of nonconforming use for benches in public right-of-way, it had no ownership interest in the land on which benches were placed, and township provided testimony that the benches were a public nuisance.

Limitations. Carlson v. Cincinnati, 2020-Ohio-4685 | 1st Appellate District | 9/30/20 In property owner's action seeking to stay demolition of a vacant building on one of his properties where city counterclaimed to recover fees for various alleged violations, trial court erred in awarding city an unpaid vacated building maintenance license fee and late fee because the statute of limitations had expired by the time the city filed its claim, R.C. 2305.07.

Dismissal. Ferner v. State, 2020-Ohio-4698 | 6th Appellate District | 9/30/20 In taxpayers' action against city seeking declaratory judgment regarding enforceability of a charter amendment granting Lake Erie and citizenry certain rights regarding pollution, dismissal of complaint for failure to state a claim was error where the amendment was properly enacted, a Civ.R. 12(B)(6) determination does not reach the merits of the challenged claims beyond the facts alleged on the face of the pleading, and trial court did not convert the motion to dismiss to a determination on summary judgment in order to address merits of taxpayers' claims.

Limitations. Bremar v. Ohio Univ., 2020-Ohio-4912 | Ohio Court of Claims | 9/30/20 In student's action for, inter alia, breach of contract against state university following his dismissal from an academic program, summary judgment in favor of state university is granted since the statute of limitations began to run when the program director informed plaintiff in a letter that if he did not withdraw from the program he would be dismissed effective on a specified date, and it was this date on which student's action accrued, rather than the date of student's appeal, and therefore his claim is time-barred, R.C. 2743.16(A).

Appropriation/Attorney fees. State ex rel. New Wen, Inc. v. Marchbanks, 2020-Ohio-4865 | Supreme Court of Ohio | 10/14/20 After restaurant's petition for writ of mandamus was granted compelling state department to conduct appropriation proceedings to determine compensation after road closure, denial of restaurant's application for attorney fees and costs was not error because R.C. 163.58 does not allow a property owner who initiates an inverse-condemnation proceeding to recover attorney fees, and R.C. 163.62 allows attorney fees only when the proceeding is instituted by a state agency.

Zoning. Marietta v. Washington Cty. Woman's Home Bd. of Trustees, 2020-Ohio-5144 | 4th Appellate District | 10/26/20 In city's action against defendant-women's home seeking an injunction to enjoin defendant from permitting buyer of home to operate a residential treatment facility without first obtaining a special use permit, summary judgment in favor of city was error where genuine issues of material fact remain as to whether the use of property as a treatment facility is a continuation of defendant's residential facility for elderly women, and although both uses fall within the same zoning classification, there is a question whether activities on premises will be of same or similar nature.

Zoning. Meziane v. Munson Twp. Bd. of Trustees, 2020-Ohio-5142 | 11th Appellate District | 11/2/20 In appellant-property owner's opposition to neighbor's application for a variance to split property into two sections, which was approved by board of zoning appeals, trial court's reversal of board's approval is affirmed where challenge to appellant's standing to appeal the board's decision is without merit since appellant established an immediate and pecuniary interest in the zoning of neighbor's property, giving appellant standing to appeal under R.C. 2506.01, and she was not required to have legal representation or announce an intention to appeal an adverse decision of the board.

Government/Administrative (continued)

Home rule. Athens v. McClain, 2020-Ohio-5146 | Supreme Court of Ohio | 11/5/20 In cities' challenge of General Assembly's enactment of laws that centralize the collection and administration of net-profits taxes, the part of the court of appeals' judgment upholding the centralized-administration system is affirmed because the laws constitute an act of limitation within the General Assembly's explicit constitutional authority, but the part of the judgment upholding the state's retention of a percentage of municipal net-profits taxes is reversed since it amounts to imposition of a tax, does not constitute an act of limitation, and exceeds the General Assembly's authority, Ohio Const. Art. XVIII, Sec. 13.

Immunity. A.J.R. v. Lute, 2020-Ohio-5168 | Supreme Court of Ohio | 11/10/20 In plaintiffs-student's family's action against defendants-former public school teacher and school officials for failure to address bullying which led to student's injury, court of appeals erred in reversing trial court's summary judgment for defendants since family did not present sufficient evidence of known risk that bully might cause physical harm to student, defendants took steps to address reports of bullying and paid special attention to student, showing they did not act recklessly, and defendants were therefore immune from liability, R.C. 2744.03(A) (6).

Public nuisance. Copley Twp. Bd. of Trustees v. Patel, 2020-Ohio-5253 | 9th Appellate District | 11/12/20 Issuance of a permanent injunction enjoining appellants from operating a hotel in township was not error since appellants failed to purge contempt where they did not comply with the terms and conditions of parties' agreed judgment entry that required appellants to correct zoning resolution violations that constituted a public nuisance; the requirement to bring hotel into compliance with building and fire codes, which appellants failed to do, was not part of the determination that appellants did not purge its contempt.

Health Care Law

Arbitration. Roberts v. KND Dev. 51, L.L.C., 2020-Ohio-4986 | 8th Appellate District | 10/22/20 In plaintiff's action against defendant-nursing home for injuries sustained when she was dropped from a lift, trial court did not err in granting defendants' motion to stay pending arbitration since the agreement met the requirements of R.C. 2711.23, and plaintiff's advanced age at time of admission did not make the agreement unconscionable because her daughter was with her and executed the agreement as plaintiff's legal representative, and the stress felt by daughter is not alone enough to establish procedural unconscionability.

Medicaid program participation. CT Ohio Portsmouth, L.L.C. v. Ohio Dept. of Medicaid, 2020-Ohio-5091 | 10th Appellate District | 10/29/20 In plaintiff-nursing facility's action to prevent defendant-state department of Medicaid from terminating its participation in the Medicaid program, trial court did not err in finding R.C. 5165.771 facially unconstitutional since statute does not contain adequate procedural protection for nursing facilities' constitutionally protected property interest in continued participation in Medicaid program,

but trial court did err to the extent that it granted judgment against defendant on plaintiff's federal constitutional claim pursuant to 42 U.S.C. Sec.1983 because defendant, as state agency, is not a person subject to suit under that statute.

Insurance

Notice. LTF 55 Prob. Ltd. v. Charter Oak Fire Ins. Co., 2020-Ohio-4294 | 8th Appellate District | 9/3/20 In action by appellants, who were entering business relationship with insured, for breach of contract and related claims against fire insurer after insurer denied claim for coverage for fire damage to property on reasoning that appellants did not promptly notify insurer as required by policy, trial court erred in granting summary judgment to insurer where appellants waited five months to notify insurer because insured stated that it would handle the claim and told appellants that it had notified insurance agent of the loss, so it was a jury issue as to whether delay was reasonable.

Relief from judgment. State Auto Ins. Co. of Ohio v. Wilson, 2020-Ohio-4456 | 9th Appellate District | 9/16/20 In plaintiff-insurer's action to recover for damages arising from an automobile accident, resulting in default judgment against defendant, trial court did not err in granting defendant's motion for relief from judgment without a hearing where defendant provided an uncontradicted sworn statement that she did not live at the address where the complaint was sent, that type of statement ordinarily is sufficient to overcome a presumption that the notice sent was actually received, and plaintiff did not request a hearing, Civ.R. 60(B).

Fiduciary duty. Hanick v. Ferrara, 2020-Ohio-5019 | 7th Appellate District | 9/28/20 In client's claim for breach of fiduciary duty arising from allegation that insurance agent advised her to purchase various annuities and life insurance policies to make sales commissions without regard to the detriment to her, summary judgment for agent on reasoning that there was no fiduciary duty between client and agent was error since agent's own testimony contained contradictory indicators as to the nature of agent's influence over client's finances, and there was a genuine issue of material fact as to existence of a fiduciary relationship; also, it was not necessary for client to provide expert evidence on the breach of fiduciary duty claim.

Exclusion. Villaos v. Nationwide Mut. Fire Ins. Co., 2020-Ohio-5123 | 12th Appellate District | 11/2/20 In plaintiff's breach of contract claim against defendant-insurer for injuries she sustained when attacked by a dog whose owners confessed judgment in her favor and assigned to her any claims against defendant with respect to their homeowner's policy, summary judgment in favor of defendant was not error where a dog liability exclusion was added to the homeowners' policy, and affidavit provided by defendant established that it mailed homeowner separate and clearly worded notices alerting them to the exclusion.

Motor vehicle. Par v. Geico Gen. Ins. Co., 2020-Ohio-5247 | 1st Appellate District | 11/10/20 In decedent's widow's action to recover automobile insurance benefits after insured decedent was shot and killed while driving, summary judgment for insurer was not error where policy at hand limited recovery to injuries

sustained arising from use of a vehicle, under the law of decedent's state of residency the policy language excluded incidents involving the shooting death of a driver, and the law of decedent's state of residency governs this dispute, even though the shooting occurred in Ohio.

Juvenile Law

Custody. In re A.D., 2020-Ohio-4284 | 9th Appellate District | 9/2/20 Award of legal custody of dependent child to father was error where trial court did not address negative evidence about father, including alleged sexual abuse against mother, conviction for violent act against mother's boyfriend and numerous moves and job changes and, although the court agreed that mother's cousin was a suitable caregiver for child, it failed to address whether it was in the child's best interest to be placed with cousin.

Custody. In re E.M.B.T., 2020-Ohio-4308 | 8th Appellate District | 9/3/20 Award of permanent custody of abused and/or neglected children to agency was not error where both mother and father were incarcerated on charges of endangering children, the father was convicted of sex offenses and issued a life sentence, the children are well cared for in foster homes, and great-uncle, although bonded with and committed to the children, does not fully appreciate the detrimental harm the mother caused her children, nor the risk of having all the children together, R.C. 2151.414.

Custody. In re J.G., 2020-Ohio-4304 | 8th Appellate District | 9/3/20 Award of permanent custody of children to agency is reversed as being against the weight of evidence and remanded to continue temporary custody where, inter alia, mother was consistent with her drug screenings and received a mental health assessment, she was eager to work and to engage in her case plan, and she always had stable housing and is employed, while the trial court's finding that the children were abused or neglected by mother was not supported by competent, credible evidence in the record.

Custody. In re E.B., 2020-Ohio-4307 | 8th Appellate District | 9/3/20 Award of permanent custody of abused and/or neglected children to the agency is affirmed where father's claim that trial court erred by failing to first attempt to place children with a relative before terminating parental rights is without merit since a parent has no standing to assert that the court abused its discretion by failing to give a relative legal custody, and the court is not required to consider placement with a relative prior to granting permanent custody to the agency.

Custody. C.A. v. H.S., 2020-Ohio-4352 | 12th Appellate District | 9/8/20 Award of legal custody of child to maternal grandfather and his wife was in child's best interest where, inter alia, mother was engaged in multiple relationships with men, one of whom was a registered sex offender and many of whom treated mother and child poorly, and child attended three different schools in one year, while child had a lot of interaction with grandparents and was well-adjusted in grandparents' home, R.C. 3109.04(F) (1).

Disqualification of counsel. Brick v. McCoun, 2020-Ohio-4371 | 5th Appellate District | 9/9/20 In juvenile court dispute concerning allocation of parental rights, trial court did not err in disqualifying father's counsel based on a conflict of interest since attorney acquired confidential information during a prior representation of mother in which mother discussed father and her relationship with father.

Custody. In re K.M., 2020-Ohio-4476 | 4th Appellate District | 9/9/20 Award of permanent custody of dependent children to agency was not error where, although the case exceeded the R.C. 2151.35(B)(1) 90-day time limit to conduct a dispositional hearing, the attorneys' schedules required a later hearing, both parents explicitly waived the 90-day requirement if the hearing could not be timely set, and the statute does not clearly deprive a court of jurisdiction to hold a dispositional hearing outside the time limits nor require automatic dismissal without prejudice.

Custody. In re K.J., 2020-Ohio-4391 | 10th Appellate District | 9/10/20 Award of permanent custody of dependent child to agency was in the best interest of the child where, inter alia, the mother was so young when the child was born that she was unable to take care of herself much less care for a child and her mental health issues were so significant that she was repeatedly hospitalized or placed in long-term residential treatment, while the child was doing well in foster care, making a strong bond with foster mother and foster mother's young child, R.C. 2151.414(D).

Custody. In re M.J.H., 2020-Ohio-4399 | 2nd Appellate District | 9/11/20 Award of legal custody of dependent child to aunt and uncle was not error since mother continued to abuse drugs, she did not obtain stable housing, and she had no income, while child is bonded with relatives where she lives along with her sibling, R.C. 3109.04.

Service. In re R.G.H., 2020-Ohio-4403 | 2nd Appellate District | 9/11/20 Vacation of prior judgment awarding custody of children to father on reasoning that mother had not been provided notice of custody hearing was error where the record reflects that service on mother was accomplished in compliance with Civ.R. 4.1(B), and father's appeal is not moot because out-of-state court's exercise of jurisdiction and subsequent custody decision occurred because of vacation order.

Custody. In re E.S., 2020-Ohio-4405 | 5th Appellate District | 9/11/20 Judgment awarding custody of child to agency is reversed where the father's appeal is timely since the trial court did not endorse on the judgment a direction to the clerk to serve on all parties pursuant to Civ.R. 58(B) and where the trial court found the child to be neglected, the court did not hold a dispositional hearing within 90 days of the filing of the complaint, in violation of R.C. 2151.35.

Concurrent cases. In re B.N.S., 2020-Ohio-4413 | 12th Appellate District | 9/14/20 In case where grandfather filed adoption petition in probate court while parents filed visitation modification motion in juvenile court, juvenile court did not err in staying parents' motion pending outcome of adoption since, although priority doctrine does not apply where two courts have exclusive jurisdiction over different issues, parents' motion could be rendered moot by outcome of adoption case, which was filed first, subjecting children to

more litigation than necessary, and parents will have an opportunity to be heard in the adoption matter.

Custody. In re C.S., 2020-Ohio-4414 | 12th Appellate District | 9/14/20 Award of permanent custody of abused, neglected and dependent child to agency was not error where the mother cannot provide the child with the safety and security he needs, she struggles with addiction and is homeless and unemployed, and her concerns lie elsewhere than with the child, R.C. 2151.414.

Custody. In re L.M., 2020-Ohio-4451 | 9th Appellate District | 9/16/20 Award of permanent custody of abused and dependent child to agency was not against the weight of evidence where a finding of abandonment is supported by record, mother failed to meet any case plan objectives and child's grandmother was not approved as caregiver based on untreated mental health issues, while child has special needs due to premature birth and exposure to drugs in utero, and child has been with foster parents since birth and has bonded with foster family, R.C. 2151.414.

Delinquency. In re R.M., 2020-Ohio-4446 | 1st Appellate District | 9/16/20 In adjudication of juvenile as delinquent by admission of adult carrying a concealed weapon, juvenile court did not err by committing juvenile to department of youth services since the record demonstrates the court did not consider uncharged conduct in making its disposition, and it properly relied on information in the predisposition investigation report, including juvenile's mother's statements concerning his behavior while at home prior to the dispositional hearing.

Delinquency. In re T.R., 2020-Ohio-4445 | 1st Appellate District | 9/16/20 In adjudication of delinquency of juvenile of adult sex offenses charged in multiple complaints, juvenile court erred in part by imposing a sexual classification on the juvenile where juvenile was not present when the classification was imposed since classification constitutes part of the sentence under the Adam Walsh Act, R.C. 2152.83 and 2152.831; remanded for classification hearing in juvenile's presence.

Custody. In re P.B., 2020-Ohio-4471 | 8th Appellate District | 9/17/20 Award of permanent custody of children to agency is affirmed where trial court's decision not to appoint independent counsel for child did not deprive child of due process since child is only entitled to independent counsel in certain circumstances, including a conflict between child and guardian ad litem, and although children in instant case had at one point expressed an interest in returning to mother, there was no indication that at the time of hearing that there was a conflict between guardian's recommendation and children's wishes, R.C. 2151.352 and Juv.R. 4(A).

Custody. In re A.J.R., 2020-Ohio-4490 | 2nd Appellate District | 9/18/20 Award of permanent custody of children to agency was not error where mother appeared to have little relationship with children and had not visited with them for years, and she failed to complete case plan objectives; additionally, there were concerns about mother's substance abuse, mental health and ability to provide for children's basic needs, and guardian ad litem recommended that agency be granted permanent custody.

Custody. In re J.Q., 2020-Ohio-4507 | 12th Appellate District | 9/21/20 Award of temporary custody of dependent child to agency was not error since dependency was demonstrated by child's poor school attendance and performance as well as concerns about child's physical safety where mother barred child from preparing or accessing food and locking child in bedroom, and mother did not receive ineffective counsel prior to her admission that she had trouble getting child to go to school, R.C. 2151.04.

Sealing. In re H.S., 2020-Ohio-4530 | 11th Appellate District | 9/21/20 In application to seal record of delinquency of, inter alia, adult aggravated arson and subsequent grant of probation that was successfully terminated, denial of application was not error where trial court found the juvenile was not yet satisfactorily rehabilitated to a degree meriting the sealing of her record in view of the serious nature of her delinquency adjudication and her subsequent traffic citation for an accident causing more than \$1,000 damage, R.C. 2151.356.

Custody. In re R.S., 2020-Ohio-4560 | 5th Appellate District | 9/22/20 Award of permanent custody of child to agency met sufficiency/weight of evidence standards where father had not visited child for nearly nine months, he did not complete his agreed-upon case plan, he made no attempt to participate in domestic violence counseling, and he continued to use drugs; also, Sup.R. 48(F) does not require guardian ad litem's report to be admitted into evidence in order to be considered by court, R.C. 2151.281.

Custody. In re R.S., 2020-Ohio-4561 | 5th Appellate District | 9/22/20 Award of permanent custody of child to agency was not error where independent counsel for child was not required because nothing in the record established that child consistently and repeatedly expressed a strong desire to live with mother, appointment of guardian ad litem is not specifically required in dependency cases pursuant to Juv.R. 4(B), and no conflict of interest requiring appointment of guardian ad litem existed because mother voluntarily signed a temporary care agreement at beginning of child's temporary custody.

Custody. In re K.E., 2020-Ohio-4572 | 5th Appellate District | 9/23/20 Award of permanent custody of children to agency is affirmed where mother's assertion that trial court erred by failing to engage her in a colloquy to confirm that she knowingly, intelligently and voluntarily stipulated to award permanent custody of children to agency is without merit since mother offered only a limited stipulation that she was not presently in a situation where the children could be placed back with her, and in that context the trial court had no obligation to engage in a review of mother's rights.

Custody. In re D.S., 2020-Ohio-4794 | 4th Appellate District | 9/24/20 In award of permanent custody of neglected and dependent child to agency, father's counsel was not ineffective for failing to request a continuance until father could attend hearing since, inter alia, there is no evidence that the court would have granted the request or that the result of the permanent custody proceeding would have been different if counsel had asked for a continuance, and the record contains more than ample evidence to support the trial court's custody decision.

Delinquency. In re S.H., 2020-Ohio-4605 | 6th Appellate District | 9/25/20 In adjudication of juvenile as delinquent by admission of adult aggravated arson and vandalism, commitment to department of youth services for concurrent periods of one year and six months, respectively, was not error where juvenile had been on long-term juvenile probation and accompanying supportive services for prior delinquency adjudications and then committed the offenses underlying this case while in a less restrictive placement alternative.

Custody. In re L.C., 2020-Ohio-4629 | 12th Appellate District | 9/28/20 Award of legal custody of dependent child to maternal grandmother was not error where child has done very well in grandmother's care, grandmother put child's best interests first, she testified that she will abide by court orders relating to mother's ability to see child and, although father completed his case plan, he has not always acted in child's best interests nor has he been as active in child's life as he could have been, R.C. 2151.353.

Delinquency. In re A.F., 2020-Ohio-4622 | 3rd Appellate District | 9/28/20 In adjudication of juvenile as delinquent for adult rape, trial court was authorized by statute to commit juvenile to both the legal care and custody of the department of youth services for a minimum of one year and place him on a term of probation until age 21 for the same offense, R.C. 2152.22(A) and In re L.R.

Bindover. State v. Abdullah, 2020-Ohio-4813 | 7th Appellate District | 9/28/20 In consolidated appeals in which juvenile defendant pled guilty following bindover in one case and also pled guilty in a case initiated in adult court, matter is remanded since, although the guilty pleas are valid because the court was not required to invoke reverse bindover or give an advisement pursuant to R.C. 2152.121, trial court failed to apply the procedure of R.C. 2152.121 to the juvenile offense.

Custody. In re L.S., 2020-Ohio-4757 | 5th Appellate District | 9/30/20 Award of permanent custody of dependent child to agency was in child's best interest where, inter alia, mother's inability to maintain sobriety, work, housing or a consistent relationship with her children outweighed child's early struggles with placement and separation from his mother, and child's current placement is working out well, R.C. 2151.414(D).

Custody. In re A.K., 2020-Ohio-4700 | 6th Appellate District | 9/30/20 Award of permanent custody of dependent child to agency was in child's best interest where, inter alia, mother died unexpectedly and father failed to complete any of the recommended follow-up to initial assessments, failed to complete parenting or budgeting classes, failed to be present for a home visit or refused home visits and was sentenced to a prison term of more than five years, while child's health issues were addressed by foster family with whom child bonded, R.C. 2151.414(D).

Dependent child. In re C.R., 2020-Ohio-4676 | 9th Appellate District | 9/30/20 Adjudication of children as dependent and award of temporary custody to father was not error where mother's statements as to how child sustained burns on his hands from hot tap water were inconsistent, child's statements to police and social workers indicated that mother had held his hands under hot water, social worker testified she believed child was competent to describe the incident, and pediatrician testified that burn lines on hands supported conclusion that hands had been forcibly held under hot water for an extended period of time.

Abused/Dependent child. In re J.A., 2020-Ohio-4677 | 9th Appellate District | 9/30/20 Adjudication of children as abused and/or dependent was error where magistrate erred in asserting that the timing or age of child's injuries was not relevant to a determination of abuse, medical experts and providers opined that injuries likely existed while child was a newborn patient in NICU and were a result of birth trauma or subsequent medical care, agency's expert's testimony was modified multiple times regarding age of injuries, and children's dependency was based entirely on abuse of one child, R.C. 2151.013(C) and 2151.04(C).

Custody. In re T.W., 2020-Ohio-4712 | 10th Appellate District | 9/30/20 Award of permanent custody of child to agency was error where the judgment entry failed to show that the court considered all the R.C. 2151.414(D) best interest factors, there were no observations about mother's interaction with child, no statement as to child's wishes for placement, no conclusion about whether a legally secure placement could be achieved without granting permanent custody, and no reference to child's age or mother's culture and country of origin.

Custody. In re B.M., 2020-Ohio-4756 | 8th Appellate District | 10/1/20 Award of permanent custody of abused and neglected child to agency was not error where mother was unable to engage with and complete her case plan, child's three siblings were removed from mother's care for similar reasons, mother failed to obtain stable housing, she failed to demonstrate sobriety, and child was bonded and thriving with caregiver, R.C. 2151.414.

Bindover. State v. Hughley, 2020-Ohio-4741 | 8th Appellate District | 10/1/20 In conviction of, inter alia, aggravated murder, juvenile court did not err in finding that 15-year-old was not amenable to rehabilitation in the juvenile system and binding him over to the general division, R.C. 2152.10(B) and 2152.12, where psychologist, although not making a recommendation for or against bindover, listed four factors for bindover and 10 factors against, and testimony of other witnesses supported trial court's decision to bindover.

Delinquency. In re C.B., 2020-Ohio-4749 | 8th Appellate District | 10/1/20 Adjudication of juvenile as delinquent for adult rape and abduction was not against the weight of evidence where, although victim's statements to officers and others was inconsistent in some regards, she consistently maintained that she did not give consent, and her testimony that appellant caused her to bump her head when he pushed her shoulders back and climbed on top of her, restricting her movement, supports the elements of the abduction charge.

Custody. In re J.H., 2020-Ohio-4796 | 5th Appellate District | 10/5/20 Award of permanent custody of children to agency was not error where mother failed to successfully complete case plan and continued to place children in unsafe situations, children did not feel safe with mother, they had been diagnosed with PTSD, and they did not have a bond with biological father; in contrast, children were placed with same foster family and bonded with foster parents, R.C. 2151.414.

Custody. In re K/S Children, 2020-Ohio-4808 | 1st Appellate District | 10/7/20 In awarding permanent custody of child to agency, trial court did not err in denying father's request for continuance of permanent custody hearing since magistrate balanced father's interests and the interests of child who was in need of permanency, child and her sibling had been in custody for more than two years with the same foster parents who wanted to adopt them, and father had not visited child in more than four years.

Custody. In re R.W., 2020-Ohio-4861 | 5th Appellate District | 10/7/20 Award of permanent custody of children to agency was not error where there is a no contact order between father and children; however, mother intends to continue involvement with father after he is released from prison, father did not complete his prior case plan, he did not reduce the risk he posed to children, and there is no bond between father and children, while children are bonded to foster parents and wish to stay with them, R.C. 2151.414.

Custody. In re E.S., 2020-Ohio-4843 | 5th Appellate District | 10/7/20 Awarding permanent custody of child to agency and adjudicating child neglected is reversed where the time for father to file notice of appeal never began to run because trial court failed to serve father with notice in compliance with Civ.R. 58(B), and the dispositional hearing for neglect adjudication was not held within 90 days of the filing of the complaint, as required by R.C. 2151.35(B)(1).

Custody. In re O.P., 2020-Ohio-4835 | 8th Appellate District | 10/8/20 Award of legal custody of child to aunt and uncle is reversed where, although trial court determined that parental custody would be detrimental to child, it failed to make specific findings on the record or in the judgment entry that mother is unsuitable due to psychiatric issues and that legal custody is in the best interest of child, R.C. 2725.01.

Custody. Bruns v. Green, 2020-Ohio-4787 | Supreme Court of Ohio | 10/8/20 Affirming trial court's judgment terminating shared-parenting plan between parents and designating mother as the sole residential and legal custodian of the parties' minor child was not error since, under the plain language of R.C. 3109.04, a trial court is not required to find a change in circumstances, in addition to considering the best interest of the child, before terminating a shared-parenting plan and designating one parent as the residential parent and legal custodian.

Custody. In re O.L.G.C., 2020-Ohio-4981 | 4th Appellate District | 10/8/20 Award of custody of child to mother instead of father was not error where father is disabled as a result of mental issues and mother is not, mother's ongoing issues with alcohol have improved, father spends only some time with child when he has custody, but mother spends most of her time with child when she has custody, both parties made false claims about the other and engaged in unscrupulous behavior, and neither party has clean hands concerning facilitation of visitation, R.C. 3109.04.

Custody. In re I.H., 2020-Ohio-4853 | 6th Appellate District | 10/9/20 Award of permanent custody of child to agency was in child's best interest where, inter alia, mother suffered from chronic mental illness and physical disability so severe that it rendered her unable to provide an adequate permanent home for the child and father demonstrated lack of commitment toward the child, failing to visit when having the opportunity, and father also was faced with pending felony charges, R.C. 2151.414(D).

Custody. In re R.A., 2020-Ohio-4846 | 2nd Appellate District | 10/9/20 Award of legal custody of child to paternal grandmother is affirmed since trial court's denial of mother's motion for a continuance was not error where, inter alia, mother discharged counsel shortly before hearing, counsel had effectively represented mother for a substantial period of time, it is unclear how long any delay would have been to obtain new counsel, and a continuance would have been inconvenient for grandmother and for child.

Bindover. State v. Cuffie, 2020-Ohio-4844 | 2nd Appellate District | 10/9/20 Discretionary bindover of 16-year-old to adult court for adult weapon offenses following a probable causes hearing and an amenability hearing was not error where a psychologist concluded it was his opinion that the juvenile would not benefit from treatment in the juvenile justice system, and the juvenile's mother basically agreed with the psychologist's conclusion, and juvenile court considered the R.C. 2921.12(D) and (E) factors.

Delinquency. In re B.D.H., 2020-Ohio-4879 | 12th Appellate District | 10/13/20 Adjudication of juvenile as delinquent for adult felony sex offenses met the sufficiency and weight of evidence standards since there is no requirement that testimonial evidence of sexual abuse must be corroborated by physical or other evidence and a victim's testimony is sufficient to establish that sexual conduct occurred, and trier of fact did not lose its way in its credibility determinations where parties' testimony conflicted on the alleged events.

Custody/Mootness. Rhoden v. Hurt, 2020-Ohio-5065 | 4th Appellate District | 10/13/20 In mother's motion to review shared parenting plan, arising from dispute about child's participation in football, it was not error to suspend father's parenting time through football season since his refusal to support child's football participation during his parenting time was unreasonable, R.C. 3109.04; even though the temporary suspension expired, the issue is not moot because child is a middle school student with intent to continue playing football, and the controversy is capable of repetition, yet evading review.

Custody. In re P.T., 2020-Ohio-4900 | 6th Appellate District | 10/14/20 Award of permanent custody of children to agency was not error where parents failed to complete services to solve problems causing children's removal and they demonstrated a lack of commitment to children by failing to visit, mother did not make substantial progress addressing her mental health issues, and father was charged with domestic violence, while children's needs were met in their foster home, R.C. 2151.414.

Bindover. State v. Garner, 2020-Ohio-4939 | 6th Appellate District | 10/16/20 In bindover of juvenile to adult court and conviction by plea of felonious assault and involuntary manslaughter, admission of an evidence technician report and the police laboratory report concerning ballistic issues at the bindover hearing without the authors of those reports being available for cross-examination did not violate the Confrontation Clause in the context of a bindover hearing that is a preliminary proceeding and did not preclude defendant's ability to confront and cross-examine the authors of the reports at the subsequent trial, In re B.W.

Adoption. In re Adoption of M.B., 2020-Ohio-4940 | 6th Appellate District | 10/16/20 In adoption proceeding, trial erred in ruling that father's consent for adoption was not required on reasoning that father failed to provide support since father's paternity was established six months before the adoption petition was filed, and the one-year requirement for failure to provide maintenance and support in R.C. 3107.07(A) had not been satisfied.

Custody. In re P.S., 2020-Ohio-4929 | 2nd Appellate District | 10/16/20 Award of legal custody of neglected and dependent child to foster parents was in child's best interest where mother had a history of violent behavior and lived with maternal grandmother, who was involved in a violent relationship with her boyfriend, resulting in almost 40 police calls to her residence, while child had lived with foster parents almost since birth and was doing well in their care, R.C. 2151.353(A).

Custody. In re B.M.M., 2020-Ohio-4956 | 11th Appellate District | 10/19/20 Award of legal custody of dependent children to third party relatives was not error where, although mother made steady progress on her case plan, children mistrusted her and her stability, children are adapted to and thriving in current placements, and the court was not compelled to extend temporary custody to agency beyond the statutory termination date for final disposition of the case.

Custody. In re D.T., 2020-Ohio-4964 | 5th Appellate District | 10/19/20 Award of permanent custody of children to agency was in children's best interest where, inter alia, there was no furniture, clothing or food in their apartment, mother and father had drug dependency issues, and mother had mental health issues, while children had special needs, one having behavioral issues, the other suffering from drug exposure in utero, and children were bonded with their foster family, who were interested in adopting the children, R.C. 2151.414(D).

Custody. In re C.T., 2020-Ohio-4965 | 5th Appellate District | 10/19/20 Awarding permanent custody of children to agency rather than awarding legal custody to maternal uncle was in children's best interest where, inter alia, uncle had little contact with the children, he was unaware of the children's special needs, he was also unaware of mother's and father's current substance abuse concerns, and he had not explored childcare options other than his mother, who was already denied custody of the children; a trial court is not required to first determine that no suitable relative placement exists before it may grant permanent custody to agency.

Custody. J.M. v. J.C., 2020-Ohio-4963 | 10th Appellate District | 10/20/20 In maternal aunt's action seeking custody of child following mother's death, resulting in shared parenting agreement between aunt and child's father, trial court did not err in denying father's motion for relief from judgment where parties' agreement was approved and signed by father, service was perfected by publication as to father when his address was unknown, and the record supports trial court's determination based on the best interest of child rather than on father's unsuitability, Civ.R. 60(B).

Custody. State ex rel. A.B. v. Stucki, 2020-Ohio-4968 | 9th Appellate District | 10/21/20 Father's petition for writ of mandamus to compel judge to appoint qualified expert in parental alienation to assess children is dismissed where trial court was ordered on remand to consider merits of father's motion to modify case plan, but remand did not expressly require a parental alienation evaluation, and although father did not approve of the doctor who judge selected to assess children for alienation, judge's order was consistent with the mandate, Civ.R. 12(B)(6).

Custody. In re C.P., 2020-Ohio-4978 | 5th Appellate District | 10/21/20 Award of permanent custody of neglected and dependent child to agency was not error where, although mother made progress toward understanding and being attentive to child's special needs, she failed to address her employment situation, mental health issues and substance abuse issues, she continued to have contact with inappropriate individuals who could pose a threat to the child, and the child's foster family sees to his special needs, R.C. 2151.414.

Custody. In re A.R., 2020-Ohio-5005 | 8th Appellate District | 10/22/20 In award of permanent custody of neglected child to agency (appeal regarding one child is dismissed), mother was not denied due process when trial court quashed subpoena for child to be transported to court for trial since court addressed subpoena at start of hearing, mother had no right to have child observe the proceeding, and court may excuse the attendance of a child at a hearing in cases involving neglected children, R.C. 2151.35(A)(1) and Juv.R. 27(A).

Custody. In re C.B., 2020-Ohio-5151 | 4th Appellate District | 10/22/20 Award of permanent custody of children to agency was not error where, although mother claims she was denied due process because she did not receive actual notice of pretrial and final custody hearings, she attended the final hearing and was permitted to participate and testify in spite of arriving late, she received constructive notice of at least two

of three hearings because she attended them, she failed to raise at trial the issue about her incorrect address or lack of notice and is barred from doing so on appeal, and she did not suffer prejudice as the result of misdelivered notices.

Custody. In re A.F., 2020-Ohio-5069 | 1st Appellate District | 10/28/20 Award of permanent custody of two children to agency and legal custody of other child to child's stepmother was not error since, inter alia, mother did not make behavioral changes necessary to provide a safe and stable home for children, she continued to engage in aggressive behavior, she continued her relationship with one of the children's father after he was convicted of burglary, and she did not secure stable housing, and father did not request unification services or custody of child, R.C. 2151.414 and former R.C. 2151.353.

Custody. In re D.N., 2020-Ohio-5092 | 10th Appellate District | 10/29/20 Award of permanent custody of abused, neglected and dependent children to agency was not error where children had been victims of parents' convictions of child endangerment under R.C. 2929.22(A), and evidence showed that mother repeatedly missed drug testing appointments, lacked commitment toward children and failed to regularly visit or communicate with them, while children are well bonded with foster parents, R.C. 2151.031 and 2151.414.

Custody. In re S.J.S., 2020-Ohio-5105 | 2nd Appellate District | 10/30/20 Terminating parties' shared parenting and granting legal custody of child to father with parenting time to mother was not error where trial court found that father was the parent most likely to honor and facilitate court-approved parenting time rights and abide by other court orders, mother willfully denied father's right to parenting time in accordance with current court orders, and mother failed to demonstrate an ability to encourage affection and contact between father and child, R.C. 3109.04.

Custody. In re J.L.S., 2020-Ohio-5143 | 11th Appellate District | 11/2/20 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, father struggled to provide safe and stable housing and to provide sufficient medical care, and there was concern about father's mental health and a lack of follow through with treatment, while children were bonded with each other and their foster parents and can be adopted by their foster family, R.C. 2151.414(D).

Intervention. In re R.B., 2020-Ohio-5134 | 3rd Appellate District | 11/2/20 Denial of grandmother's motion to be joined and to intervene as a third party in child's dependency adjudication was not error where grandmother had temporary custody of child under the express legal approval of the court and therefore did not qualify as a person who has acted in loco parentis pursuant to Civ.R. 24(B), the court had the obligation to protect the interests of the child's parents as parties to the action, and permitting intervention would give the parents an additional party opponent, R.C. 2151.04.

Custody. In re C.C., 2020-Ohio-5138 | 3rd Appellate District | 11/2/20 Award of permanent custody of dependent child to agency was not error where mother continued to test positive for drugs and was unable to graduate to unsupervised visitations, and although child expressed desire to reunite with mother, mother failed to show that she could remain sober or maintain adequate housing for an extended period of time, while child had strong bond with foster caregivers, R.C. 2151.414.

Due process. In re A.P., 2020-Ohio-5131 | 3rd Appellate District | 11/2/20 Adjudication of children as dependent is reversed and remanded since parents' procedural due process rights were violated when mother's and father's opportunities to cross-examine agency's witness were limited and where the court made its decision before mother had an opportunity to present witnesses, precluding mother's counsel from presenting evidence in support of her position.

Custody. In re J.L.S., 2020-Ohio-5143 | 11th Appellate District | 11/2/20 Award of permanent custody of dependent children to agency was not error where father was unable to obtain stable and secure housing for children, he lacked commitment to completing his case plan, he continued to live with children's mother in spite of her domestic violence incidents, and he failed to comply with requirements to complete counseling, while children are bonded with each other and with foster parents, R.C. 2151.414.

Custody. In re A.M., 2020-Ohio-5102 | Supreme Court of Ohio | 11/3/20 Award of permanent custody of child to agency, affirmed by court of appeals, was not error where magistrate considered the child's best interest with findings scattered throughout her decision, and the trial court stated that it had independently reviewed the record, heard oral argument on mother's objection to magistrate's decision and considered all relevant factors, including those in R.C. 2151.414(D)(1); the statute requires only that the court consider the best interest factors.

Custody. In re L.G., 2020-Ohio-5171 | 5th Appellate District | 11/3/20 Award of permanent custody of children to agency was not error where children each have behavioral and emotional issues and mother remains unable to meet children's emotional and physical needs, has failed to address her own mental health issues, did not obtain and maintain stable housing or employment, did not take her medications as prescribed and was inconsistent in attending children's individual counseling, R.C. 2151.414(D).

Support. Goines v. Bowers, 2020-Ohio-5161 | 1st Appellate District | 11/4/20 Reduction of amount father was required to pay each month to pay off child support arrearages, rather than cancellation of arrearages, was not error since court had no authority to retroactively modify father's arrearages where father willfully failed to submit to genetic testing, generally, due and unpaid child-support payments may not be modified, and father did not demonstrate any special circumstances such as fraud or wrongdoing, R.C. 3119.83.

Custody. In re M.W., 2020-Ohio-5199 | 10th Appellate District | 11/5/20 Award of permanent custody of dependent child to agency was not error where, inter alia, mother did not visit child consistently, especially when child was in a facility with an open visitation policy, and while mother and child had a strong bond and child wished to return to mother's custody, mother failed to demonstrate an appropriate level of parenting supervision, she had no plans for continued counseling and medical care for child, and award of custody to agency was not against the weight of evidence, R.C. 2151.414.

Custody. In re A.S., 2020-Ohio-5186 | 8th Appellate District | 11/5/20 In custody hearing held after extension of time for temporary custody, dismissal of agency's action on reasoning that temporary custody order was about to expire and that no dispositional motion had been filed by agency was error since court had continuing jurisdiction over child and was required to conduct a hearing and issue an appropriate order of disposition in accordance with best interest of child, R.C. 2151.415 (B) and (D).

Delinquency. In re C.H., 2020-Ohio-5188 | 8th Appellate District | 11/5/20 In adjudication by admission of juvenile in two cases as delinquent of, inter alia, adult assault and burglary and placement at a community correctional facility and subsequent violation of probation by discharge from a residential facility, it was error to fail to give juvenile credit for time spent at a shelter care facility since it qualified as a "secure facility" pursuant to R.C. 2152.18(B) where juvenile was not free to come and go from facility and the safety measures at the facility ensured the safety of the surrounding community, even though there was no physical barrier.

Delinquency. In re A.T., 2020-Ohio-5191 | 8th Appellate District | 11/5/20 In adjudication by admission of juvenile as delinquent for, inter alia, adult weapon and receiving stolen property offenses and imposition of confinement with the department of youth services for a total of one and a half years, denial of credit for time juvenile was at a residential facility between the adjudication hearing and the dispositional hearing was error where the court failed to hold a hearing to determine whether juvenile was entitled to confinement credit for the time he spent at the residential facility, R.C. 2152.18(B).

Bindover. State v. Gregory, 2020-Ohio-5207 | 2nd Appellate District | 11/6/20 Juvenile court's reverse bindover of juvenile to adult court was not error where, although trial court erred in its evaluation of one factor in R.C. 2152.12(D), any error was harmless since it involved a minor point that the relationship of the juvenile to the victim facilitated the offense, even though there was no relationship between victim and defendant that facilitated the offense, R.C. 2152.12(B)(3), where trial court relied more heavily on other factors, including a psychological evaluation of the juvenile and the young age of the victims in its reverse bindover determination.

Custody. In re C.R., 2020-Ohio-5208 | 2nd Appellate District | 11/6/20 Award of legal custody of dependent child to maternal grandparents was in child's best interest where, inter alia, child resided at grandparents' home since he was born, and grandparents along with other relatives ate meals together with child and regularly read to him and played with him, resulting in a very strong bond, while mother was unable to maintain employment and displayed erratic behavior that was part of her mental health issues requiring medication, R.C. 2151.353(A)(3).

Custody. In re D.K., 2020-Ohio-5251 | 10th Appellate District | 11/10/20 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, father was on probation for domestic violence against mother and tested positive for drug use, mother had significant mental health issues and a history of substance abuse, while the children are very bonded to foster parents and express affection for them, the foster parents are a potential adoptive placement for the children, and the children receive counseling and are in treatment for PTSD, R.C. 2151.414(D).

Continuance. In re S.G., 2020-Ohio-5244 | 1st Appellate District | 11/10/20 Award of permanent custody of child to agency is affirmed since trial court did not err in denying mother's request for a continuance and in holding hearing without mother being present where mother provided no proof that she had been hospitalized at the time of the hearing and she failed to appear at a number of other hearings without explanation or notification, while counsel meaningfully represented mother at the hearing for which there was a complete record, and mother failed to show how her physical presence would have changed the outcome of the case.

Custody. In re D.Z.F., 2020-Ohio-5246 | 1st Appellate District | 11/10/20 Award of permanent custody of one child to agency and legal custody of one child to non-biological father figure was not error where, inter alia, mother showed no significant progress to remedy conditions resulting in removal of children, she failed to obtain stable housing and income, she did not have reliable transportation or child care, and both children are bonded to their caregivers, R.C. 2151.414(D).

Landlord and Tenant

Forcible entry and detainer. T & R Properties, Inc. v. Wimberly, 2020-Ohio-4279 | 10th Appellate District | 9/1/20 In landlord's forcible entry and detainer action in which tenant did not attend magistrate's hearing and was not represented by counsel, trial court erred in adopting magistrate's decision in favor of landlord solely on the basis of its representative's affidavit, which was hearsay, since a trial conducted under R.C. 1923.07 is subject to the Civ.R. 43(A) requirement that testimony be given in open court; also, motion to dismiss appeal as moot, asserting that tenant had vacated the premises, is denied since the appeal presents an issue capable of repetition, yet evading review, where tenant demonstrated a reasonable expectation that she may again be subject to a forcible entry and detainer claim likely supported only by an affidavit.

Rent. Zeerco L.L.C. v. Zayed, 2020-Ohio-4347 | 9th Appellate District | 9/8/20 In action by landlord to recover rent due from tenant, arising from tenant's failure to pay rent that was triggered by finding standing water in rented units, trial court did not err in awarding damages to landlord on reasoning that the leases provided that tenant would be responsible for any repairs needed on the premises and that R.C. 5301.11, the statute that relieves a tenant from rent payment, did not apply since there was no total or near total destruction of the premises.

Repair costs. Tillimon v. Tate, 2020-Ohio-4544 | 6th Appellate District | 9/11/20 In forcible entry and detainer action by landlord where tenant filed counterclaim for reimbursement for repairs to the property, trial court erred in awarding tenant damages for repairs covered by express agreement between the parties that tenant receive a credit on the purchase price of the property for completing certain repairs when she exercised her purchase option, and she did not exercise that option; however, trial court did not err in permitting tenant to pursue her claim for unjust enrichment as to repairs not covered by express agreement.

Forcible entry and detainer. Norwich Apts. II v. Sanders, 2020-Ohio-4540 | 6th Appellate District | 9/11/20 In forcible entry and detainer action against tenant, trial court did not err in denying tenant's request for a reasonable accommodation relating to her inability to pay rent since the only disputed element was whether tenant's disability was the cause of her inability to pay rent and that it was not due to economic circumstances, other than those which qualified her for subsidized housing, and the court could not find a causal link between her disability and her failure to pay rent sufficient to warrant the accommodation requested.

Security deposit. Alcoroso v. Correll, 2020-Ohio-4752 | 8th Appellate District | 10/1/20 In tenant's action seeking return of her security deposit, trial court erred in denying tenant's motion for attorney fees, and judgment was against the weight of evidence where jury found that landlord wrongfully withheld part of the security deposit, tenant provided her forwarding address in compliance with R.C. 5321.16, jury was required, but failed, to award statutory double damages and reasonable attorney fees, and attorney fees are allowed as costs rather than damages.

Due process. H3RE, L.L.C. v. Anderson, 2020-Ohio-4974 | 1st Appellate District | 10/21/20 In action for forcible entry and detainer, back rent and damages in which magistrate issued a decision granting landlord restitution of the premises and continued the remaining claim for damages for the filing of an answer or default judgment, and tenant filed an answer and counterclaims but failed to appear for trial, trial court's ruling in favor of landlord for back rent against tenant on his counterclaims is affirmed as not violating due process where tenant acknowledged that he had reasonable notice of the trial date.

Forcible entry and detainer. Palmer Gardens v. Rodgers, 2020-Ohio-5040 | 6th Appellate District | 10/23/20 In landlord's forcible entry and detainer action against tenant for rent and fees owed on lease, trial court erred in granting landlord a writ of restitution where landlord posted notice stating it intended to terminate

tenancy due to nonpayment of rent, but the only rent owed was for the current month, which landlord refused to accept, all remaining charges were for damage to the apartment and unpaid late fees from the previous month, and nothing in the lease indicates that unpaid damage charges would become rent charges.

Quiet title. Wilson Court 2, L.L.C. v. Suarez, 2020-Ohio-5074 | 5th Appellate District | 10/26/20 In plaintiff-property owner's forcible entry and detainer action against defendants-former tenants who filed a counterclaim asserting an equitable interest in subject property, judgment on the pleadings for plaintiff on defendants' quiet title claim was not error where defendants failed to provide any evidence in support of their claim, agreement made with former property owner concerning defendants' ownership interest was oral, making it barred by the Statute of Frauds, and defendants did not appear in chain of title under the Marketable Title Act, R.C. 5301.55.

Res judicata. Wilson Court 2, L.L.C. v. Suarez, 2020-Ohio-5075 | 5th Appellate District | 10/26/20 In plaintiff-property owner's forcible entry and detainer action against defendants-former tenants who claimed an equitable interest in subject property, trial court did not err in denying defendants' motion for summary judgment since the court made a finding in a previous judgment entry that defendants did not have an equitable interest in subject property, and therefore current claim is barred by res judicata.

Forcible entry and detainer. Faqi v. Pattin, 2020-Ohio-5115 | 6th Appellate District | 10/30/20 In complaint for forcible entry and detainer, trial court did not err in adopting magistrate's findings that tenant was in default under the lease and that landlord's notice to vacate premises was lawfully served where landlord purchased property and assumed lease from prior owner, and landlord did not receive rent from tenant and waited three days to file action against tenant after posting notice to vacate, R.C. 1923.04.

Forcible entry and detainer. Sandusky Metro. Hous. Auth. v. Jackson, 2020-Ohio-5118 | 6th Appellate District | 10/30/20 In complaint for forcible entry and detainer asserting violation of terms of lease by tenant for testing positive on marijuana screens, trial court erred in finding that terms of lease were not violated since it is unchallenged that tenant submitted three positive screens for marijuana and admitted violating community control requirements.

Rent. KMG Prestige, Inc. v. Riles, 2020-Ohio-5217 | 6th Appellate District | 11/6/20 In landlord's complaint for eviction and restitution of premises in federal subsidized housing alleging tenant's non-payment of rent, trial court erred in granting judgment for landlord, even though tenant's position as caretaker which allowed in-kind rent payment was terminated, since the parties' intent was that tenant could transition to a regular resident apartment if her position was terminated, and she had already progressed through the waiting list process and paid rent for two months.

Legal impossibility. Ohio Dept. of Natural Resources v. Big Sky Energy Inc., 2020-Ohio-4374 | 5th Appellate District | 9/8/20 In action by plaintiff-state department for injunctive relief and civil penalties against defendant-energy company for failure to timely plug three oil and gas wells pursuant to division's orders where court ruled in favor of plaintiff, defendant's defense of legal impossibility was of no merit since regulations imposed on owners of oil and gas wells are based on statute, not on contract, and the doctrine of legal impossibility applies only to enforcement of contractual obligations and has no application to performance of responsibilities imposed by statute, R.C. Ch. 1509.

Relief from judgment. Darrah v. Baumberger, 2020-Ohio-4737 | 7th Appellate District | 9/25/20 In dispute about ownership of oil and gas rights, resulting in a settlement in which defendant accepted payment and signed quit claim deed conveying her mineral interests to plaintiffs, it was not error to deny defendant's Civ.R. 60(B) motion where her argument that attorney involved in settlement negotiations gave her legal advice that was contrary to her interests is meritless since attorney did not represent defendant, the bill she received for legal services was a clerical error, and her claims were supported only by daughter's self-serving affidavit, Civ.R. 60(B).

Class action. Baker v. Gulfport Energy Corp., 2020-Ohio-4825 | 7th Appellate District | 9/28/20 Denial of class certification was not error in action in which plaintiffs-heirs sought to quiet title to oil and gas rights and also alleged trespass and related claims since before it can be shown that a trespass or conversion occurred, it must first be demonstrated that plaintiffs own an interest in the royalties, and the class excludes groups necessary to ownership determinations, including heirs who opt out pursuant to Civ.R. 23(B)(3) and heirs who have entered into an oil and gas lease with defendant-gas company, Civ.R. 23(A).

Statute of frauds. Smith v. Collectors Triangle, Ltd., 2020-Ohio-4823 | 7th Appellate District | 9/28/20 In plaintiffs' action seeking a declaration that they own the royalty interests in oil and gas rights on property purchased by defendants, trial court erred in granting defendants' motion to dismiss where an oral agreement between plaintiffs modifying royalty payments is not within statute of frauds because it is a division of personal property and not an interest in real estate, the stranger rule does not apply to the reservation on a portion of the property because the interest was conveyed before the deed was executed, and defendants do not have pre-existing rights, Civ.R. 12(B)(6).

Mineral interests. Cain Ridge Beef Farm, L.L.C. v. Fisher, 2020-Ohio-4727 | 7th Appellate District | 9/30/20 In plaintiffs-farm owners' action seeking declaratory judgment that defendants' mineral interests in plaintiffs' property were abandoned, summary judgment for plaintiffs was error where, although plaintiffs are sole owners of the farm, the farm owns the surface rights, and the farm did not file the abandonment documents as required by Dormant Mineral Act, and plaintiffs individually knew they were not surface owners because they conveyed the property to the farm less than three months before publishing their notice of intent, R.C. 5301.56.

Quiet title. Richards v. Hillgas, 2020-Ohio-4717 | 7th Appellate District | 9/30/20 In dispute over oil and gas rights on several tracts of property, trial court erred in granting summary judgment to plaintiffs on intervenor's complaint to quiet title where the mineral ownership of the acreage in question had previously been adjudicated by way of final, agreed judgment entries in which title to shallow rights was quieted in intervenor.

Arbitration. French v. Ascent Resources-Utica, L.L.C., 2020-Ohio-4719 | 7th Appellate District | 9/30/20 In action to declare that oil and gas leases expired for lack of production, trial court erred in overruling defendant's motion for an arbitration stay where primary issue is whether defendant is permitted to use property for oil and gas development, oil and gas leases do not grant defendant title to or possession of real property, and exception to mandatory arbitration under R.C. 2711.01(B)(1) does not apply.

Mineral interests. Crum v. Yoder, 2020-Ohio-5046 | 7th Appellate District | 10/26/20 In heirs' action to declare that their mineral interests were not abandoned under the 2006 Dormant Mineral Act where the property was ultimately conveyed, with reservation of heirs' mineral interests, to current owners who published a notice of abandonment in newspaper, denial of heirs' summary judgment motion was not error since abandonment notice was sufficient, R.C. 5301.56, where property's address was only one on record and it was not necessary for current owners to search Internet to locate heirs; also, deed's word-for-word repetition of mineral reservation from earlier deed did not constitute a savings event under R.C. 5301.56(B)(3)(a).

Procedure

Attorney fees. DiPenti v. Park Towers Condominium Assn., 2020-Ohio-4277 | 10th Appellate District | 9/1/20 In condominium resident's action against association disputing charge assessed for plumbing repair that involved her unit, resulting in a summary judgment for the association, trial court's assessment of attorney fees against the resident is affirmed since the condominium declaration authorizes an award of reasonable attorney fees, the resident initiated the lawsuit involving lengthy litigation, the fact that the attorney fees were substantially higher than repair cost at issue did not make the fees unreasonable, and the resident did not object to the magistrate's decision imposing fees.

Contempt. In re Statman, 2020-Ohio-4285 | 1st Appellate District | 9/2/20 Attorneys' convictions of indirect contempt for conduct of a non-lawyer in an affiliated law firm was error where the court cannot create vicarious liability for failure to prevent another's conduct, the cases involved attorneys' status as designated trial attorneys, which under R.C. 2901.21(A) requires an affirmative act of disobedience or resistance to a court order, and the order in this case only required them to report violations of judge's order of which they had knowledge.

Relief from judgment. Russell v. McDonalds, Inc. #3737, 2020-Ohio-4300 | 8th Appellate District | 9/3/20 In action in which plaintiff alleged that she was injured while being pursued by defendant's employee, resulting in judgment for plaintiff in absence of defendant at small claims hearing, denial of defendant's Civ.R. 60(B) motion to set aside judgment is affirmed

where summons, complaint and magistrate's decision were served in care of business owner at its address, defendant was aware of incident prior to instant action, its insurance carrier requested records for internal investigation, and defendant's lack of response was not excusable neglect, Civ.R. 60(B).

Service. Bartko v. Bartko, 2020-Ohio-4302 | 8th Appellate District | 9/3/20 In divorce action in which wife claimed that service was not proper, trial court did not err in granting divorce to husband since husband's counsel spoke with wife to confirm that she was living with a friend, after service at friend's address, counsel began discussions with wife's attorney regarding divorce matters, and wife failed to rebut presumption of proper service where she filed notice of appeal after filing a Civ.R. 60(B) motion and affidavit which was not before the trial court when it concluded that service was properly perfected.

Appeal. DES Material & Supply Co., L.L.C. v. Pincus, L.L.C., 2020-Ohio-4360 | 11th Appellate District | 9/8/20 In breach of contract and related claims action in which the trial court issued judgment, but deferred ruling on a counterclaim for attorney fees, appeal is dismissed for lack of a final appealable order under R.C. 2505.02 since fewer than all claims were resolved.

Appeal. Glover v. Canann, 2020-Ohio-4361 | 11th Appellate District | 9/8/20 Appeal of trial court's denial of motions to set aside magistrate's order approving a shared parenting plan is dismissed for lack of a final appealable order where the court instructed the magistrate to issue a nunc pro tunc order to reflect the correct birth date of the minor child, the appealed entry does not contain a statement of relief or terminate the action, and court's ruling is an interlocutory order, R.C. 2505.02(B).

Appeal. Benick v. Morrow Cty. Health Dist., 2020-Ohio-4443 | 5th Appellate District | 9/14/20 In terminated public employee's action alleging that county officials violated a number of statutory provisions, including the whistleblower statute, where trial court granted officials' motions to dismiss and motions for judgment on the pleadings, employee's appeal is dismissed for failure to prosecute under App.R. 18(C) since his brief does not satisfy the requirements of App. 16(A).

Appeal. Crown Servs., Inc. v. Miami Valley Paper Tube Co., 2020-Ohio-4409 | Supreme Court of Ohio | 9/15/20 In action by plaintiff-staffing company to recover from defendant-client workers' compensation benefits that plaintiff was required to pay to its employee who was injured, court of appeals' dismissal of appeal of trial court's dismissal of case without prejudice, based on forum non conveniens, is affirmed on reasoning that trial court's dismissal was not a final appealable order pursuant to R.C. 2505.02 since plaintiff could re-file the action and dismissal did not affect a substantial right, determine the action or prevent a judgment.

Res judicata. McDougald v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-5150 | Ohio Court of Claims | 9/16/20 In plaintiff-inmate's action against defendant-department of corrections for deletion of video footage which allegedly showed defendant denying plaintiff medical treatment, summary judgment in favor of defendant is granted where plaintiff's claim is barred by res judicata because he previously brought an action for the same allegation in which he could have litigated the instant claim, and even if res judicata did not apply, plaintiff failed to show that the deletion of footage was negligent or improper.

Attorney disqualification. Starnier v. Johnson, 2020-Ohio-4580 | 10th Appellate District | 9/24/20 In plaintiff's action for, inter alia, breach of contract against his trucking business' buyer, which was controlled by defendants, trial court's ruling that granted plaintiff's motion to disqualify defendants' counsel for side-switching is affirmed where defendants opposed an evidentiary hearing as required under Kala and therefore waived the right to raise the argument on appeal, and defendants failed to request findings of fact despite multiple opportunities to do so.

Discovery. Ettayem v. H.E.R., L.L.C., 2020-Ohio-4647 | 5th Appellate District | 9/28/20 In action re-filed by property owner to recover for personal property allegedly removed from property during foreclosure proceedings, trial court did not err in issuing protective order to prevent a deposition sought by property owner who was attempting to conduct a second deposition on the same subject matter as the original case, and bank did not have to bear the additional burden and expense of submitting to a duplicative deposition, particularly since it involved traveling from out-of-state.

Suspension. Disciplinary Counsel v. Goulding, 2020-Ohio-4588 | Supreme Court of Ohio | 9/29/20 Attorney is suspended from the practice of law for six months with the entire suspension stayed on conditions.

Affidavit. HS Fin. Group, L.L.C. v. Hinchee, 2020-Ohio-4765 | 2nd Appellate District | 10/2/20 In action to collect on consumer loan, summary judgment for plaintiff was error where affidavit submitted by plaintiff in support of motion for summary judgment failed to comply with requirements of Evid.R. 803(6), was not properly authenticated and was inadmissible.

Relief from judgment. Canel v. Holland, 2020-Ohio-4797 | 10th Appellate District | 10/6/20 In plaintiff's action asserting that defendants wrongfully disposed of her personal property they had stored for her, resulting in judgment for defendants, trial court did not err in denying plaintiff's motion for relief from judgment since plaintiff failed to appear for the scheduled trial because she left the court after a failed mediation attempt, she has not established that she has a meritorious claim to present, and she may not use Civ.R. 60(B) as a cure for her failure to appeal the court's judgment.

Jurisdiction. Patterson v. Nationwide Truck Brokers, Inc., 2020-Ohio-4803 | 9th Appellate District | 10/7/20 In a negligence action involving a motor vehicle accident where parties entered into a joint stipulation of dismissal and plaintiffs later filed a motion for sanctions, trial court erred in deciding that it lacked jurisdiction to

rule on sanctions motion on reasoning that the case had been dismissed without reservation of jurisdiction or incorporation of terms of the settlement into the dismissal since the court did not consider whether plaintiffs' motion was a collateral motion that could be considered after the stipulated dismissal.

Supersedeas bond. Professional Solutions Ins. Co. v. Novak L.L.P., 2020-Ohio-4829 | 8th Appellate District | 10/8/20 In professional liability insurer's successful action to recover deductible and expenses related to recovering deductible from attorney arising from underlying legal malpractice action, trial court erred in granting attorney's motion to stay execution of judgment without requiring him to post a supersedeas bond where the bond required by Civ.R. 62(B) was not posted when the case was stayed, and there was no indication that attorney had the financial means to satisfy the judgment so that a bond would not be needed.

Relief from judgment. Dublin v. RiverPark Group, 2020-Ohio-4892 | 10th Appellate District | 10/13/20 In city's action for appropriation of easements over property owner's condominium development resulting in award of easement to city and order of payment to property owner, trial court erred in denying, for lack of jurisdiction, property owner's motion for relief from judgment where, although a trial court loses jurisdiction to consider Civ.R. 60(B) motions once a party has appealed an underlying judgment, the court did have jurisdiction to entertain the motion in this case because the appeal had concluded and the judgment was absolutely final.

Court costs. Hillman v. Larrison, 2020-Ohio-4896 | 10th Appellate District | 10/13/20 Refusal to address plaintiff's claim that court costs and filing fees were illegally imposed on him in connection with his filing of an R.C. 2935.09 affidavit by accusation was not error since trial court's judgment entry did not impose any court costs or filing fees on plaintiff, and the clerk of courts, who billed plaintiff for fees, is not a party to this action.

Service. Hunt v. Arboretum Home Owners Assn., 2020-Ohio-4947 | 12th Appellate District | 10/19/20 In plaintiff-homeowner's breach of contract action against defendant-homeowners association arising from denial of plaintiff's petition to add a garage to his property, trial court erred in denying defendant's motion for relief from default judgment awarded to plaintiff's since proper service was never effectuated where defendant's listed agent was no longer a resident of Ohio, and plaintiff was notified of the issue but took no further action to pursue proper service through other means.

Appeal. N.S. v. E.J., 2020-Ohio-4971 | 9th Appellate District | 10/21/20 In petitioner's action seeking civil stalking protection order based on allegations that respondent made unauthorized withdrawals from petitioner's bank account and threatened legal action, judgment denying petition is affirmed since petitioner failed to timely file objections to the order adopting magistrate's denial of the protection order prior to filing the appeal, Civ.R. 65.1, R.C. 2903.211.

Dismissal. Leotta v. Great Lakes Pain Mgt. Ctr., 2020-Ohio-4995 | 8th Appellate District | 10/22/20 In plaintiff's medical malpractice claim against defendants-physician and pain management center, trial court did not err

in granting defendants' motion to dismiss where service was not perfected on physician and, although defendants previously moved unsuccessfully to dismiss under Civ.R. 12(B)(6), they properly preserved their Civ.R. 12(B)(5) defense by raising it in both the initial motion to dismiss and their answer, Civ.R. 12(G) and (H).

Jurisdictional priority. Hughes v. Hughes, 2020-Ohio-5026 | 11th Appellate District | 10/22/20 Trial court's judgment granting application to confirm arbitration award was not error in case in which defendant-appellant had earlier filed a motion to vacate the award in trial court in another county, but that court dismissed the motion, so the jurisdictional priority rule did not preclude instant trial court from granting application to confirm where the arbitration award had not been vacated, modified or corrected, and no challenge to the arbitration award was pending in any court.

Summary judgment. Cascade Capital, L.L.C. v. Magyar, 2020-Ohio-5029 | 2nd Appellate District | 10/23/20 In plaintiff's action asserting that defendant defaulted on retail installment agreement to purchase a vehicle, trial court erred in granting summary judgment to plaintiff where documents before the trial court were only the complaint and some exhibits, which contained hearsay and were not authenticated, as required for purposes of summary judgment, Civ.R. 56(C) and (E).

Dismissal. Taylor-Winfield Corp. v. Huntington Natl. Bank, 2020-Ohio-5056 | 11th Appellate District | 10/26/20 In plaintiff's action against defendant-bank in which plaintiff filed affidavit with multiple documents in response to summary judgment motion where trial court allowed plaintiff to file amended complaint with later order to re-file same documents plaintiff filed with affidavit, trial court erred in dismissing case with prejudice under Civ.R. 41(B)(1) on reasoning that plaintiff failed to comply with its order, failed to file a response to defendant's motion to dismiss and failed to attend hearing since the circumstances were not extreme, and less drastic alternatives were available.

Attorney fees. State ex rel. Infinity Secs., Inc. v. Froment, 2020-Ohio-5090 | 10th Appellate District | 10/29/20 In relator-securities company's mandamus action to compel superintendent of department of insurance to issue an order relative to relator's permit application, magistrate did not err in finding, and the parties agree, that the action was moot through resumption of the administrative proceeding, and relator is not entitled to attorney fees and costs under R.C. 2335.39 because it did not satisfy the definition of prevailing eligible party since it did not obtain its requested writ of mandamus.

Appeal. Ally Bank v. Bey, 2020-Ohio-5093 | 10th Appellate District | 10/29/20 In plaintiff-bank's action for money judgment and possession of collateral property against defendant for alleged default on terms of retail sales contract, appeal is dismissed for lack of a final appealable order where, although trial court issued an order of possession to plaintiff, defendant still has a statutory means to prevent transfer of property by filing a bond or cash deposit, and the order does not resolve which party is entitled to permanent possession of the property, so it is not yet final, R.C. 2505.02(B)(4) and 2737.07(B).

Procedure (continued)

Privileged communications. Yost v. Schaffner, 2020-Ohio-5127 | 5th Appellate District | 10/30/20 In underlying fraud case where intervenor plaintiff-state attorney general subpoenaed bank records in anticipation of deposition of defendant-attorney who was holding funds belonging to county community development corporation (CDC) in his IOLTA account, trial court did not err in denying defendant's motion to quash subpoena and motion for protective order related to IOLTA records where IOLTA banking transactions are not confidential communications between attorney and client, and CDC waived attorney-client privilege with defendant.

Relief from judgement. Wr Steele Co., L.L.C. v. Stone Oak Market, 2020-Ohio-5117 | 6th Appellate District | 10/30/20 In plaintiff's action to recover money for architectural services provided to defendant, resulting in a default judgment for plaintiff, trial court did not err in denying defendant's Civ.R. 60(B) motion to vacate default judgment where defendant voluntarily satisfied the judgment and plaintiff filed a satisfaction of judgment and release of the judgment lien.

Mandamus. Fields v. Cottrill, 2020-Ohio-5163 | 5th Appellate District | 11/4/20 Petition for writ of mandamus seeking to compel judge to release funds to relator's brother is dismissed for failure to state a claim where funds were seized from relator's home as part of criminal case, but jury determined that the money was not subject to forfeiture, and relator had an adequate remedy at law by filing a replevin action, thus precluding the issuance of a writ of mandamus, Civ.R. 12(B) (6).

Capacity to sue. Red Foot Racing Stables v. Brewer, 2020-Ohio-5201 | 10th Appellate District | 11/5/20 Dismissal of plaintiffs' breach of contract and negligence claims relating to defendants' care of plaintiffs' horses was not error since plaintiffs lacked capacity to sue by being precluded from commencing or maintaining an action in trade name or fictitious name in any court without being registered with the secretary of state under R.C. 1329.10(B), and individual plaintiff did not claim to own any of the horses and could not represent the plaintiffs since he was not a licensed attorney.

Transcript. Rathburn v. Watson, 2020-Ohio-5213 | 2nd Appellate District | 11/6/20 In action for a civil protection order, judgment for defendant on reasoning that plaintiff did not prove a pattern of behavior under R.C. 2903.211(A) is affirmed since plaintiff failed to provide a transcript and the regularity of proceedings below is presumed, and plaintiff's arguments that she was prevented from presenting her witness testimony and documentary evidence cannot be reviewed.

Inmate's action. Hill v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-5234 | 12th Appellate District | 11/9/20 In plaintiff-inmate's action against defendant-correctional institution for impeding his ability to effectively advocate in favor of his petition for writ of habeas corpus, trial court did not err in granting defendant's motion for judgment on the pleadings since plaintiff's affidavit of prior litigation failed to satisfy requirements of R.C. 2969.25(A) and his affidavit of indigence similarly failed to meet statutory requirements of R.C. 2969.25(C) and Civ.R. 12(C).

Appeal. Dickson v. Dickson, 2020-Ohio-5238 | 11th Appellate District | 11/9/20 In action brought by executrix of estate asserting 13 claims against multiple defendants, appeal is dismissed for lack of a final appealable order where the judgment disposed of some but not all of the claims and parties, and no Civ.R. 54(B) determination of no just reason for delay was made in the entry, R.C. 2505.02.

Appeal. 255 Fifth St. Holdings, L.L.C. v. Chemed Sislin, L.L.C., 2020-Ohio-5248 | 1st Appellate District | 11/10/20 In lender's foreclosure action against borrowers claiming it is entitled to prematurity rental receipts collected by borrowers, appeal is dismissed for lack of jurisdiction since trial court adopted magistrate's decision granting partial summary judgment for lender but did not enter its own judgment clearly and finally disposing of the issue or determining the relief to which lender was entitled, and the entry was therefore not final and appealable.

Professional Responsibility

Suspension. Disciplinary Counsel v. Judge, 2020-Ohio-4406 | Supreme Court of Ohio | 9/14/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension. Dayton Bar Assn. v. Strahorn, 2020-Ohio-4407 | Supreme Court of Ohio | 9/14/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Reinstatement. Disciplinary Counsel v. Grego, 2020-Ohio-4426 | Supreme Court of Ohio | 9/15/20 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. Wiggins, 2020-Ohio-4500 | Supreme Court of Ohio | 9/21/20 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

Suspension. Trumbull Cty. Bar Assn. v. Lutseck, 2020-Ohio-4501 | Supreme Court of Ohio | 9/21/20 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

Resignation. In re Resignation of Ball, 2020-Ohio-4575 | Supreme Court of Ohio | 9/25/20 Attorney resigns from the practice of law with disciplinary action pending.

Suspension. Butler Cty. Bar Assn. Certified Grievance Commt. v. Blauvelt, 2020-Ohio-4576 | Supreme Court of Ohio | 9/25/20 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

Reinstatement. Disciplinary Counsel v. Spinazze, 2020-Ohio-4680 | Supreme Court of Ohio | 10/1/20 Attorney is reinstated to the practice of law.

Suspension. In re Hoover, 2020-Ohio-4774 | Supreme Court of Ohio | 10/5/20 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. Trumbull Cty. Bar Assn. v. Lutseck, 2020-Ohio-4837 | Supreme Court of Ohio | 10/9/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension. Cleveland Metro. Bar Assn. v. Baasten, 2020-Ohio-4838 | Supreme Court of Ohio | 10/9/20 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Resignation. In re Resignation of Braun, 2020-Ohio-4839 | Supreme Court of Ohio | 10/9/20 Attorney resigns from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Moore, 2020-Ohio-4840 | Supreme Court of Ohio | 10/9/20 Attorney resigns from the practice of law with disciplinary action pending.

Defense. State ex rel. Brockler v. O'Malley, 2020-Ohio-4985 | 8th Appellate District | 10/22/20 In petitioner-attorney's mandamus action seeking to compel respondent-county prosecutor to provide him with a defense during disciplinary proceedings, trial court erred in issuing a writ of mandamus and in ordering attorney fees where petitioner did not have a clear legal right to a defense by respondent under R.C. 309.09, and equitable rights arising from promissory estoppel cannot form the basis for relief in mandamus.

Suspension. Disciplinary Counsel v. Riddle, 2020-Ohio-4961 | Supreme Court of Ohio | 10/22/20 Attorney is suspended from the practice of law for six months, with the entire suspension stayed on conditions.

Resignation. In re Resignation of Berling, 2020-Ohio-5060 | Supreme Court of Ohio | 10/28/20 Attorney resigns from the practice of law with disciplinary action pending.

Public Records

Security records. McDougald v. Greene, 2020-Ohio-4268 | Supreme Court of Ohio | 9/2/20 In inmate's mandamus action to compel prison records custodian to release requested documents, writ of mandamus is denied where duty rosters detailing identity and location of guards posted throughout prison fall under the security records exemption to Public Records Act because the records contain information directly used for protecting or maintaining the security of the prison, R.C. 149.433(B)(1).

Cost. State ex rel. McDougald v. Sehmeyer, 2020-Ohio-4428 | Supreme Court of Ohio | 9/17/20 In relator-inmate's petition for writ of mandamus to compel respondent-records custodian to produce a document pursuant to public-records request, writ is denied where respondent, in good faith, informed relator that he had insufficient funds in his inmate account to cover the cost of copying record and, although relator did establish the level of funds in his account, he failed to show the cost of the copy to demonstrate that his funds were sufficient, R.C. 149.43.

Education records. Cincinnati Enquirer v. Univ. of Cincinnati, 2020-Ohio-4958 | Ohio Court of Claims | 9/17/20 In requester-newspaper's complaint alleging respondent-university denied access to public records regarding an investigation involving an employee and a student, special master's report recommends the court order respondent to provide requester with unredacted copies of police records and with all public files of the investigative case in question because the law enforcement records

did not become education records when shared with respondent, investigation was after student graduated, and records were not protected under FERPA, R.C. 149.43, 2743.75.

Delay. Snyder-Hill v. Ohio State Univ. Office of Compliance & Integrity, 2020-Ohio-4957 | Ohio Court of Claims | 9/22/20 In requester's action claiming that respondent-university withheld requested records from his interviews in independent investigation of respondent's former employee, special master's report recommends the court find that all claims for production of records were resolved during mediation but that respondent, while assuring requester that the documents would be provided as quickly as possible, purposely delayed access to the records in violation of R.C. 149.43, and requester is therefore entitled to costs he incurred associated with the action.

Alteration. State ex rel. Gormley v. Jordan, 2020-Ohio-4759 | 5th Appellate District | 9/30/20 In relator's action seeking to compel respondent-county recorder to expunge and cancel allegedly fraudulent UCC financing statements from official records, respondent's motion to dismiss is granted where respondent was authorized and required to record the financing statements, which appear to be what they are purported to be, respondent does not have power to retroactively alter previously recorded documents, and relator has adequate remedy at law by way of civil remedies against person who filed the allegedly fraudulent liens, R.C. 317.13.

Fee. State ex rel. McDougald v. Sehmeyer, 2020-Ohio-4637 | Supreme Court of Ohio | 10/1/20 Petition for writ of mandamus to compel respondent-assistant responsible for public records requests to allow relator-inmate to inspect two use-of-force reports and a deputy warden's review of a particular use-of-force incident is denied on reasoning that relator presented a security risk and respondent offered to provide paper records at cost; R.C. 149.43 does not require a records custodian to provide copies of records free of charge.

Statutory damages. State ex rel. Schumann v. Cleveland, 2020-Ohio-4920 | 8th Appellate District | 10/9/20 Relator's petition for writ of mandamus to compel city to produce public records to substantiate mayor's statement concerning recycled materials is granted where relator suggested keywords for an email search and asked for the first 1,000 resulting emails and, although there were difficulties caused by the pandemic in satisfying the request, the documents were not released within a reasonable time and relator is awarded statutory damages and court costs, R.C. 149.42.

Moot/Legal authority. State ex rel. Perry v. Cleveland Hts. Mun. Clerk of Courts, 2020-Ohio-5193 | 8th Appellate District | 10/30/20 Petition for writ of mandamus to compel clerk of courts to produce records retention schedule and related records is dismissed as being moot since clerk filed notice of compliance and affidavit averring that requested records had been provided; also discussed: in deciding a motion to dismiss, Civ.R. 12(B)(6), extrinsic evidence may be used to show that an action is moot; public records requester need not identify legal authority to support request but does need to cite legal authority when filing petition for writ of mandamus to compel compliance

with request; request for court's administrative records is governed by Sup.R. 44, et seq.

Clarification. State ex rel. McDougald v. Greene, 2020-Ohio-5100 | Supreme Court of Ohio | 11/3/20 Petition for writ of mandamus to compel prison records custodian to provide forms identified by number is granted in part since two of the forms exist, and custodian's demand for clarification was not reasonable where relator requested stock forms rather than forms related to a specific incident, and custodian could not rely as a defense on the assertion that his request for clarification went unanswered, R.C. 149.43(B)(2); statutory damages are not awarded since relator failed to prove the method of delivery by clear and convincing evidence.

Student records. State ex rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Local Schools, 2020-Ohio-5149 | Supreme Court of Ohio | 11/5/20 In relators-media organizations' action for writ of mandamus seeking to compel school district to produce school records of former student who was killed after perpetrating a mass shooting, court of appeals did not err in denying writ since protections under Ohio Student Privacy Act, R.C. 3319.321(B), prohibit disclosure of such records without the written consent of the adult former student, with no exception for the former student's death, the statute's silence on posthumous application does not create ambiguity, and R.C. 149.43 exempts records from disclosure where the release is prohibited by state or federal law.

Records retention. State ex rel. Ware v. DeWine, 2020-Ohio-5148 | Supreme Court of Ohio | 11/5/20 In relator-inmate's petition for writ of mandamus to compel respondent-governor to provide records pertaining to respondent's office, court of appeals did not err in denying writ since relator's affidavit was disregarded because it contained non-evidentiary material, there was no basis for statutory damages because respondent's office timely satisfied its duty by sending records by certified mail, and although R.C. 107.10 mentions records that should be maintained, if they are not, respondent has no duty to produce non-existent records, R.C. 149.43.

Security records. State ex rel. Burfitt v. Sehmeyer, 2020-Ohio-5147 | Supreme Court of Ohio | 11/5/20 In relator-inmate's petition for writ of mandamus seeking to compel correctional institution's public records custodian to produce shift rosters showing assignment of correctional officers within prison, writ is denied since shift rosters are security records exempt from disclosure under R.C. 149.433 because they contain information about where officers are assigned, which officers are not firearms certified, and emergency response plans exposing strategy in case of disturbance or attack.

Public Utilities

Jurisdiction. In re Complaint of Direct Energy Business, L.L.C. v. Duke Energy Ohio, Inc., 2020-Ohio-4429 | Supreme Court of Ohio | 9/17/20 In intervenor-energy generation purchaser company's complaint filed with public utility commission asserting that meter data management agent failed to correctly calculate usage for intervenor's customer, leading to intervenor being overbilled by market operator,

commission lacked jurisdiction to rule that data management agent's failure to correctly calculate usage constituted inadequate service under R.C. 4905.22 since data management agent was not acting as a public utility when providing that service, R.C. 4905.04.

Appropriation. Ohio Power Co. v. Duff, 2020-Ohio-4628 | 12th Appellate District | 9/28/20 In plaintiff-power company's appropriation action to reroute power lines through defendants' property, trial court did not err in granting judgment in favor of plaintiff since defendants failed to rebut the presumption that the easement across their property was necessary where defendants' arguments that the easement size exceeded the necessity set forth in the resolution and that plaintiff created the need to reroute from existing right-of-way were insufficient, and plaintiff's exercise of discretion in selecting the route was not a show of bad faith.

Competition. In re Complaint of Suburban Natural Gas Co. v. Columbia Gas of Ohio, Inc., 2020-Ohio-5221 | Supreme Court of Ohio | 11/12/20 In appellant-gas company's complaint with public utilities commission alleging that appellee-competitor gas company improperly used financial incentives to home builder to improperly gain advantage in development area that appellant already served, commission's decision in favor of appellee was not error where commission found no violation of terms of parties' prior stipulated agreement, the development in question was in service territory of both gas companies, and appellee did not deploy incentives in abusive or anticompetitive manner, R.C. 4903.09.

Jurisdiction. Corder v. Ohio Edison Co., 2020-Ohio-5220 | Supreme Court of Ohio | 11/12/20 In property owners' action to prevent electric company's use of herbicide on easements over their property, court of appeals did not err in holding that common pleas court, rather than public utilities commission, has subject-matter jurisdiction to adjudicate competing property rights claims, including those involving a public utility, but court of appeals went too far in reviewing merits of the claims and in finding that the easements were ambiguous since the merits of the claims were beyond the scope of the appeal and remain for trial court's review.

Real Property

Abandonment/Adverse possession. Dulebohn v. Waynesfield, 2020-Ohio-4340 | 3rd Appellate District | 9/8/20 In plaintiffs' claim for vacation of a platted, but unimproved, alleyway owned by defendant-village, trial court did not err in granting summary judgment to defendant since the alleyway is crossed by a sewer line, demonstrating that it was not abandoned; also, plaintiffs could not adversely possess the alleyway, except to the extent they had permanent structures built onto the land, one garage was allowed that was built within a couple of feet of the alleyway, and the other adverse possession claims were properly denied since generally adverse possession does not apply against the state.

Condominium repair. Griffey v. Riverside Commons Condominium Unit Owners' Assn., 2020-Ohio-4363 | 10th Appellate District | 9/8/20 In action by condominium residents alleging damage to their unit from association's failure to properly perform repairs for gutters and downspouts, trial court did not err in finding in favor of association since evidence showed that association had performed the requested repairs, and plaintiffs failed to establish that any other work was required where the association's engineering expert testified that he did not detect dampness in crawl space and there were no structural problems with the foundation.

Foreclosure. Russell v. Jones, 2020-Ohio-4497 | 6th Appellate District | 9/18/20 In wife's complaint for foreclosure of former marital residence filed nine years after divorce judgment in which court ordered husband to execute mortgages and note in favor of wife, summary judgment for husband is affirmed where the conditions requiring payment by husband were not met, wife's argument on appeal that husband breached the terms of the mortgages by failing to keep her as a named additional insured was not made at trial and cannot be considered, and wife also abandons on appeal her argument that the note was in default.

Foreclosure. LVN Corp. v. Kempffer, 2020-Ohio-4527 | 11th Appellate District | 9/21/20 In foreclosure action, trial court did not err in granting summary judgment to plaintiff since the conditions precedent were met where two notices provided to defendants were orderly and specifically provided the information required by the notice provision of the mortgage.

Appeal. Clinton v. Home Invest. Fund, 2020-Ohio-4555 | 1st Appellate District | 9/23/20 In plaintiffs' quiet title action relating to their purchase of property that was the subject of tax foreclosure proceeding, resulting in summary judgment for plaintiffs, and plaintiffs sold the property during pendency of appeal, appeal is dismissed as moot since trial court's judgment was effective upon its filing and fully enforceable until stayed or reversed on appeal, and defendant did not obtain a stay of execution or post a supersedeas bond in order for lis pendens to apply, R.C. 2703.26.

Contract. Fiscus v. Nordquist, 2020-Ohio-4730 | 7th Appellate District | 9/24/20 In plaintiff-successor trustee's breach of contract action against defendant-purchaser of trust property, summary judgment in favor of plaintiff was not error since defendant failed to close the second phase of his purchase by the agreed closing date, his last-minute excuse of undisclosed wetlands was a bad faith effort to terminate the purchase agreement, and the letter and email extending the closing date did not constitute an amendment to the agreement signed by both parties.

Adverse possession. Leffel v. Casstown, 2020-Ohio-4593 | 2nd Appellate District | 9/25/20 In plaintiff-property owner's quiet title action regarding property he had purchased, summary judgment in favor of village was not error where description of lot in plaintiff's chain of title showed village's right-of-way, the village used the right-of-way openly, notoriously, exclusively and adversely to all properties in a continuous manner prior to plaintiff's purchase

and continued to do so after plaintiff purchased his property, and plaintiff failed to file suit within 21 years of purchase, R.C. 2305.04.

Equitable mortgage. Wilmington Savs. Fund Soc. v. Woods, 2020-Ohio-4599 | 2nd Appellate District | 9/25/20 In action seeking to foreclose on residential property where mortgage was never recorded and could not be located, trial court erred in holding that an equitable mortgage was not enforceable against heirs of deceased mortgagor where trial court did not make any findings of fact regarding execution of the alleged mortgage or its terms and incorrectly held that an equitable mortgage is unenforceable against a third party as a matter of law.

Adverse possession. Hampton v. Lively, 2020-Ohio-4713 | 4th Appellate District | 9/28/20 In substituted plaintiff-estate's action to quiet title to property, trial court erred in finding that plaintiff did not establish ownership by adverse possession where evidence showed that plaintiff's family took possession pursuant to a sales contract after having paid purchase price and that for over 21 years the family possessed the property and treated it as their own, while defendant admitted he had no evidence that his family took actions that one would expect a property owner to take, including going to the property, receiving rent or maintaining the property.

Foreclosure. Nationstar Mtge., L.L.C. v. Billock, 2020-Ohio-4723 | 7th Appellate District | 9/28/20 In plaintiff-mortgage company's foreclosure action for defendants' default on mortgage, summary judgment in favor of plaintiff was not error where the note transferred to plaintiff was indorsed in blank, rendering it payable to bearer, and affidavit authenticating the note testified to a review of original documents, while defendants failed to offer evidence that they did not receive the right to cure letter, which was sent by first class mail as required, and the affidavit set a sufficient foundation to admit documents under business records exception to hearsay, Evid.R. 803(6).

Foreclosure. Washington Mut. Bank v. Beatley, 2020-Ohio-4658 | 10th Appellate District | 9/29/20 In foreclosure action where borrowers filed contempt motion against intervenor-bank after it reported information for issuance of a tax form against one borrower following dismissal of bank's complaint, trial court did not err in determining that it had no jurisdiction to hold civil contempt proceedings against bank where case was previously unconditionally dismissed which ended jurisdiction and, even if alleged contempt were criminal in nature, borrowers failed to prove that bank was in violation of the previous decision.

Foreclosure. U.S. Bank Natl. Assn. v. Harper, 2020-Ohio-4674 | 9th Appellate District | 9/30/20 In bank's foreclosure action asserting borrowers' default on mortgage note, trial court erred in granting summary judgment in favor of bank where bank's supplemental evidentiary material was impliedly accepted by court months after the dispositive motion deadline, and the court issued its decision just 10 days after bank's filing without providing borrowers any notice that it would consider the supplemental material or providing an opportunity to challenge bank's affidavit.

Counterclaims. Helfinstine v. Wells Fargo Bank, NA, 2020-Ohio-4675 | 9th Appellate District | 9/30/20 Following judgment for bank in foreclosure action against borrower who then dismissed counterclaims for breach of contract, trespass and conversion and later re-filed the claims, trial court did not err in granting summary judgment to bank on the re-filed claims on the basis of res judicata where, although borrower argued that his claims were tort claims rather than compulsory counterclaims in the foreclosure action, the claims existed at the time of foreclosure, and the claims arose out of the same occurrence as bank's action.

Foreclosure. Bank of New York Mellon v. Fisher, 2020-Ohio-4742 | 8th Appellate District | 10/1/20 In foreclosure action, trial court did not err in finding that bank had standing to enforce note where language of loan modification agreement demonstrated that original note was not modified and was not negotiated to transfer interest to loan servicer, and borrowers failed to provide case law demonstrating that execution of loan modification agreement was comparable to a special indorsement of commercial paper.

Judgment. Elboco Ents. v. Billman, 2020-Ohio-4877 | 12th Appellate District | 10/13/20 In plaintiff-property developer's action against defendants-condominium community seeking declaration that it owned a parcel of undeveloped land that individual unit owners claimed was collectively owned by defendants, trial court erred in granting judgment on the pleadings in favor of defendants where plaintiff was previously granted default judgment against condominium owners who did not answer plaintiff's complaint, creating multiple issues of merit to be determined regarding who owns the disputed parcel, and the matter was clearly inappropriate for judgment on the pleadings.

Foreclosure. Ditech Fin., L.L.C. v. VAT Mgt., L.L.C., 2020-Ohio-5000 | 8th Appellate District | 10/22/20 In plaintiff's in rem complaint for foreclosure against defendant-property owner, trial court did not err in confirming sale of property while defendant's appeal of foreclosure judgment was pending since defendant did not post a supersedeas bond and failed to obtain a stay of confirmation of sale, and since confirmation of sale is a separate and distinct order from decree of foreclosure, trial court had jurisdiction to proceed on confirmation of sale.

Foreclosure. CitiMortgage, Inc. v. Nyamusevya, 2020-Ohio-5024 | 10th Appellate District | 10/22/20 In plaintiff-mortgagee's foreclosure action against defendant-borrower, trial court on remand did not err in granting plaintiff's motion for directed verdict where defendant decided not to participate in trial, plaintiff presented sufficient unrebutted evidence of the amount due on defendant's mortgage loan, which was the only question for review, and the court offered a neutral explanation for defendant's absence to avoid influencing the jury.

Foreclosure. FV-I, Inc., In Trust for Morgan Stanley Mtge. Capital Holdings, L.L.C. v. Townsend-Young, 2020-Ohio-5184 | 8th Appellate District | 11/5/20 In plaintiffs-banks' foreclosure action against defendants for default on mortgage, summary judgment in favor of plaintiffs was not error where defendants are not parties nor third-party beneficiaries of assignment contracts and therefore lack standing to challenge validity of assignments,

defendants failed to show any plaintiffs violated the Fair Debt Collection Practices Act, and plaintiffs owned defendants' debt and therefore acted as creditors and not debt collectors.

Summary judgment. Sullinger v. Sullinger, 2020-Ohio-5225 | 3rd Appellate District | 11/9/20 In plaintiff's claim for, inter alia, slander of title against defendants-lessees of farm that plaintiff owned with defendant-joint owner, it was not error to convert defendant-joint owner's motion to dismiss to a motion for summary judgment and then to grant summary judgment to all defendants since all defendants were provided the opportunity to participate in the hearing for summary judgment, defendants introduced evidence that lessees no longer farmed the property, and plaintiff failed to prove he incurred any actual or special damages as to his slander of title claim.

Foreclosure. Bercutt v. Unknown Heirs of Addis, 2020-Ohio-5230 | 12th Appellate District | 11/9/20 In successor trustee's foreclosure action that led to sale of property on which trust was holder of note and mortgage, resulting in foreclosure and sale, it was not error to deny trustee's motion to set aside sale where, although the sale raised less than one-third of amount due under the loan and amount was significantly below property's value, statutory requirements for the sale were followed, the sheriff's office had no duty to inform trustee of the sale, multiple buyers had opportunity to bid on property and trustee's arguments about property's value were speculation.

Contract. Vogel v. Albi, 2020-Ohio-5242 | 1st Appellate District | 11/10/20 In plaintiff's breach of contract action against defendant-seller of building that plaintiff was interested in purchasing, judgment in favor of seller was not error since there was no meeting of the minds where the email exchange demonstrated that the parties contemplated the execution of a formal contract and that they did not intend to be bound by the email exchange, every email sent from defendant's agent to plaintiff contained language that any acceptance of an offer was contingent upon receipt of a fully executed written contract, and the emails did not reflect with definiteness and certainty the agreed purchase price.

Tax

License tax. Put-in-Bay v. Mathys, 2020-Ohio-4421 | Supreme Court of Ohio | 9/16/20 In prosecution of defendants-vehicle rental businesses for failure to pay municipal license tax, appeals court did not err in reversing trial court's dismissal of criminal charges against defendants where, although R.C. 4503.02 pre-empts local taxes on operation of vehicles on public highways, the tax in question is a business tax imposed for the privilege of renting vehicles as a business venture and the tax does not concern or otherwise place limitations on the use of vehicles on public highways.

Income. Riverside v. Patino, 2020-Ohio-4486 | 2nd Appellate District | 9/18/20 In city's action against taxpayer for unpaid municipal income taxes, summary judgment in favor of city was not error where city provided an affidavit from the income tax administrator averring that taxpayer's tax forms indicated he resided within the city, the Buck Act allows taxing authorities to collect income taxes from persons residing in federal

areas, and taxpayer is not exempt under R.C. 718.01(C)(13) for living in a portion of the city on the Air Force base because he lived within city limits.

Commercial activity. Defender Sec. Co. v. McClain, 2020-Ohio-4594 | Supreme Court of Ohio | 9/29/20 In taxpayer's application for commercial activity tax refund for fees received from purchaser of property security services contracts that taxpayer sold to Ohio residents, appeals court improperly situated gross receipts to Ohio and erred in denying refund where, under R.C. 5751.033(I), purchaser used or received the benefit of contractual rights in its physical locations outside Ohio and not in Ohio where purchaser's customers resided, and purchaser paid taxpayer for contracts for intangible assets rather than for performing services in relation to Ohio property.

Real property. G&I IX 6840 Pontius, L.L.C. v. Franklin Cty. Bd. of Revision, 2020-Ohio-4660 | 10th Appellate District | 9/29/20 In taxpayers' challenge to tax valuation of three parcels of property, trial court did not err in affirming Board of Revision's determination of valuation on basis of county auditor's assessment where taxpayers' appraiser acknowledged that the properties contained improvements, but he appraised the value of the land portion of each property, treating the land as if vacant and available for development.

Jurisdiction. Hess Ohio Devs., L.L.C. v. Belmont Cty. Bd. of Revision, 2020-Ohio-4729 | 7th Appellate District | 9/28/20 Administrative appeals to the board of revision (BOR) and board of tax appeals (BTA) challenging the valuation and assessment of certain real property are dismissed for lack of subject matter jurisdiction, and the decisions of the BOR and the BTA are vacated, since the complaints actually sought a determination of ownership rights in real property and the BOR exceeded its statutory authority in R.C. 5715.19(A)(1)(d) to value and assess real property when it determined ownership rights in the real property.

Torts

Legal malpractice. Nalluri v. Jones, 2020-Ohio-4280 | 10th Appellate District | 9/1/20 In physician's action against attorneys asserting fraud, breach of contract and related claims related to his dissatisfaction with representation, trial court did not err in granting summary judgment in favor of attorneys on the basis of the statute of limitations applicable to legal malpractice since the substance of the physician's complaint sounded in malpractice and the other claims for fraud and breach of contract were subsumed within the legal malpractice claim, R.C. 2305.11(A).

Negligent entrustment. Beck v. Lally, 2020-Ohio-4305 | 8th Appellate District | 9/1/20 In plaintiff's negligence action for injuries sustained in a rear-end vehicle accident, trial court did not err in granting summary judgment in favor of defendant-vehicle owner and dismissing claim against defendant-vehicle driver where the plaintiff failed to assert a negligent entrustment claim against the owner or present evidence that the owner had actual or implied knowledge that the driver was inexperienced or incompetent to operate the vehicle, and driver's participation in mediation did not constitute waiver of insufficient service of process defense.

Negligent hiring. Sitton v. Massage Odyssey, L.L.C., 2020-Ohio-4282 | 1st Appellate District | 9/2/20 In patron's negligent hiring and related claims action against massage parlor after her masseur was convicted of sexual imposition and held civilly liable, trial court did not err in granting summary judgment to parlor since masseur was an independent contractor and also it was not foreseeable that he would engage in the prohibited conduct, even though his statement that he was fully licensed was inaccurate.

Tortious interference. Xtreme Limo, L.L.C. v. Antill, 2020-Ohio-4314 | 10th Appellate District | 9/3/20 In various torts and contract claims against defendant-former employee who secured a new job at alleged competitor of plaintiff-corporation, the trial court did not err in declining to order plaintiff to front litigation expenses for defendant since no such advancement is required by statute or by the corporate by-laws, and policy arguments do not trump or alter statutory text.

Medical malpractice. Asai v. Obstetrics & Gynecology Assocs., Inc., 2020-Ohio-4350 | 12th Appellate District | 9/8/20 In medical malpractice action against physicians and hospital, arising from complications during birth of child, where patient asserted that hospital was vicariously liable for alleged negligence of physicians, trial court did not err in granting summary judgment to hospital since the patient did not prove that she looked to the hospital, as opposed to the individual practitioner, to provide competent medical care where, inter alia, during the course of her pregnancy, the patient visited her physician on numerous occasions in the physician's private offices.

Employer intentional tort. Estate of Mennett v. Stauffer Site Servs., L.L.C., 2020-Ohio-4355 | 12th Appellate District | 9/8/20 In action for employer intentional tort arising from death of employee when trench collapsed, trial court did not err in granting summary judgment to employer where evidence showed that supervisor ordered that work stop on the trench, that he and public works supervisor left to retrieve a trench box to make the conditions safer, and that other employees abandoned work on the trench once the determination was made that it was unsafe, R.C. 2745.01.

Medical malpractice. Gysegem v. Ohio State Univ. Wexner Med. Ctr., 2020-Ohio-4910 | Ohio Court of Claims | 9/8/20 In medical malpractice action arising from patient's recurring infection following two abdominal surgical procedures, judgment is rendered for medical center since a presumption of negligence is never indulged from the mere fact of injury, but the burden of proof is on the patient to prove the negligence of the surgeon and that such negligence is a proximate cause of injury and damage; the evidence presented by the patient does not establish that the surgeon failed to meet the standard of care.

Slip and fall. Anderson v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-4437 | 10th Appellate District | 9/15/20 In slip and fall negligence action where plaintiff-inmate was injured when he slipped and fell on allegedly unsalted pavement during cold weather, judgment in favor of defendant-corrections department was not error where defendant exercised reasonable care in treating walkways relative to weather conditions

and had no actual or constructive notice of slippery conditions developing many hours later; also, plaintiff failed to object to defendant's alleged failure to respond to discovery requests, Civ.R. 53(D).

Battery. McDougal v. Ohio Dept. of Rehab. & Corr., 2020-Ohio-4911 | Ohio Court of Claims | 9/16/20 In plaintiff-inmate's action for battery and negligence against defendant-department of corrections for using excessive force against him and denying him medical attention, defendant's motion for summary judgment is granted where plaintiff initially refused directives while being escorted to another housing unit, he spit on an officer when asked to open his mouth, the degree of force used was justified and privileged, and the incident report states that plaintiff was checked by medical and mental health following the incident.

Product liability/Negligence. Sultaana v. Barkia Ents., Inc., 2020-Ohio-4468 | 8th Appellate District | 9/17/20 In plaintiff's action for product liability and negligence asserting that she suffered a foodborne illness from consuming an eggplant purchased nine days earlier from defendant-grocery store, trial court did not err in granting summary judgment to defendant since plaintiff failed to establish that the eggplant proximately caused her illness where she failed to provide expert testimony to support her claim.

Limitations. S.A.S. v. Wellington School, 2020-Ohio-4478 | 10th Appellate District | 9/17/20 In plaintiff-student's sexual abuse action against school and educators alleging being filmed in locker room, trial court erred in granting summary judgment in favor of defendants on reasoning that the general statutes of limitation applied where R.C. 2305.111 sets a longer, 12-year limitations period for childhood sexual abuse and, although plaintiff alleges claims against a teacher for gross sexual imposition, which would not implicate the school as actor, R.C. 2305.111(C) includes all actions brought by a victim of childhood sexual abuse alleging any claim resulting from abuse.

Legal malpractice. Pippin v. Sanderson, 2020-Ohio-4551 | 5th Appellate District | 9/21/20 In legal malpractice action in which client alleged that he lost possession of a vehicle because of attorney's deficient representation and trial court directed a verdict in favor of attorney, trial court did not err in denying client's motion for summary judgment where attorney was retained to represent client in a criminal matter, client's original attorney's motion for release of the vehicle had been granted, client still requested instant attorney to also file a motion, and there were fact issues regarding the parameters of attorney's duty to recover the vehicle.

Legal malpractice. Peh v. Kollin, 2020-Ohio-4491 | 2nd Appellate District | 9/18/20 In legal malpractice action, summary judgment for defendants-attorneys and law firms was not error where there was no fact issue as to the date plaintiff's malpractice claims accrued since the cognizable event was court of appeals' reversal of trial court's judgment in favor of instant plaintiff, that event started the one-year statute of limitations running on the malpractice claims, which were filed more than one year later, R.C. 2305.11(A), and ignorance of the legal significance of known facts cannot be used to circumvent the statute of limitations.

Medical malpractice. Staples v. OhioHealth Corp., 2020-Ohio-4578 | 10th Appellate District | 9/24/20 In plaintiff's medical malpractice action against hospital and nurse, whose work at hospital was arranged by a staffing agency, trial court erred in granting summary judgment in favor of hospital on reasoning that nurse was an independent contractor and not an agent of hospital since nurse was subject to control and supervision of hospital, her daily work was not controlled by the staffing agency under contract with hospital, and plaintiff's failure to individually serve nurse while timely serving hospital was not a bar to vicarious liability against hospital.

Negligence. Hall v. Coleman Behavioral Health Servs., 2020-Ohio-4640 | 11th Appellate District | 9/28/20 In plaintiff-patient's negligence action against defendants-therapists after patient engaged in criminal conduct following an emergency session, trial court did not err in granting defendants' motion to dismiss on basis that claim was barred by statute of limitations where the claim was not brought within the limitations period for either non-medical claims under R.C. 2305.10 or medical malpractice under R.C. 2305.113, and claim for intentional infliction of emotional distress fails because plaintiff did not allege that distress was intentionally caused.

Defamation. Rosado-Rodriguez v. Nemenz Lincoln Knolls Market, 2020-Ohio-4814 | 7th Appellate District | 9/28/20 In defamation complaint arising from incident between parties that occurred at a store, summary judgment for defendants was not error where there is no evidence that at least one other person heard allegedly defamatory statement when the statement was made.

Assignment of claim. Three-C Body Shops, Inc. v. Francois, 2020-Ohio-4710 | 10th Appellate District | 9/30/20 In action by plaintiff-body shop seeking to recover balance on vehicle repairs necessitated by accident in which defendant was at fault and plaintiff's customer assigned his claim against any at-fault tortfeasor to plaintiff, trial court did not err in granting defendant's motion for judgment on the pleadings since plaintiff's customer did not have the ability to assign rights where liability for the accident and a right to damages had not been established at the time the assignment agreement was signed.

Product liability. Stiner v. Amazon.com, Inc., 2020-Ohio-4632 | Supreme Court of Ohio | 10/1/20 In action claiming that defendant violated the Product Liability Act arising from death of student from ingestion of caffeine product ordered on defendant's website, summary judgment in favor of defendant, affirmed by court of appeals, was not error since defendant was not a supplier under R.C.2307.71(A)(15) where it did not perform any act exercising control over the product or preparation of the product for use or consumption, including having no role in procuring the caffeine product from manufacturer or storing, packaging or distributing the product.

Limitations. Naiman Family Partners, L.P. v. Saylor, 2020-Ohio-4987 | 8th Appellate District | 10/22/20 In plaintiffs' action for declaratory judgment, tortious interference and conversion against defendant-executor and beneficiary of estate of deceased beneficiary relating to the issue whether disputed shares of trust passed to deceased beneficiary by operation of trust amendment, trial court did not err in dismissing

the complaint on reasoning that the claims were barred by four year statute of limitations, R.C. 2305.09, and neither the discovery rule nor the continuing tort doctrine applied to this case.

Damages. McGugan v. Olszewski, 2020-Ohio-4992 | 8th Appellate District | 10/22/20 In negligence action arising from traffic accident caused by defendant in which trial court awarded plaintiff damages that were challenged by plaintiff in a motion for new trial, asserting in part that jury's short deliberations reflected influence of passion or prejudice, trial court did not err in denying plaintiff's motion where, inter alia, after physical therapy, plaintiff returned to running and riding his motorcycle for thousands of miles, and he did not fill his prescription for pain medication or visit the podiatrist as he was instructed by the emergency physician.

Negligence. Williams v. AVI Food Sys., Inc., 2020-Ohio-5001 | 8th Appellate District | 10/22/20 In plaintiff's negligence action against defendant-food service company for injuries sustained when he was hit by a box-truck driven by defendant-employee, trial court erred in granting defendants' motion for summary judgment where plaintiff was walking in the roadway ahead of and in the same direction as employee, and there is conflicting evidence as to whether plaintiff was reasonably discernible at the time of the accident; also, defendants are on notice that plaintiff may argue negligence per se related to assured clear distance, R.C. 4511.21.

Negligent entrustment. M.M. v. M.F., 2020-Ohio-5082 | 8th Appellate District | 10/29/20 In plaintiffs' negligent entrustment claim for death and serious injuries sustained by passengers in vehicle loaned by defendant to her daughter and driven by her granddaughter, summary judgment in favor of defendant was not error where defendant did not expect her granddaughter to drive the vehicle because granddaughter had very recently started driving, and even if defendant had entrusted the vehicle to granddaughter, defendant had no evidence that granddaughter was not competent to drive at time of entrustment.

Employer intentional tort. Cruz v. Western, 2020-Ohio-5086 | 8th Appellate District | 10/29/20 In employee's employer intentional tort action alleging that her workplace injuries, sustained when employee reached around machine's profile gate to lubricate machine, were the result of employer's deliberate removal of an equipment safety guard, summary judgment for employer was not error since the profile gate to keep errant chips from flying into the operator did not qualify as a safety guard for purposes of R.C. 2745.01 and the manual lubrication process did not constitute deliberate removal of a safety guard.

Damages. Jawary v. Underwood, 2020-Ohio-5176 | 8th Appellate District | 11/5/20 In plaintiff's action against defendant-vehicle driver for injuries sustained in a rear impact accident, trial court erred in denying plaintiff's motion for a new trial on issue of non-economic damages stemming from her injury where, although defendant's medical expert opined that plaintiff's injury was likely caused by a previous accident, defendant is fully liable for damages even if plaintiff had a pre-existing condition that made the consequences of the wrongful act more severe, Civ.R. 59(A)(6).

Interference with inheritance. Widok v. Estate of Wolf, 2020-Ohio-5178 | 8th Appellate District | 11/5/20 In plaintiff's action for intentional interference with expectancy of inheritance against defendants-decedent's estate and others to enforce decedent's alleged promises regarding her inheritance from her sister, who had allegedly promised an inheritance to plaintiff, summary judgment in favor of defendants was error since plaintiff's claim did not require vested right of inheritance, evidence showed that decedent fraudulently destroyed her sister's will to prevent plaintiff from inheriting, and probate court lacked jurisdiction over claims for money damages arising from allegations of fraud, R.C. 2107.04.

Slip and fall. Matthews v. Texas Roadhouse Mgt. Corp., 2020-Ohio-5229 | 12th Appellate District | 11/9/20 In plaintiff's slip and fall negligence claim against defendant-restaurant for injuries sustained when she slipped on what she thought was grease and fell when stepping from sidewalk onto parking lot, summary judgment for defendant was not error since there was no evidence that defendant created the hazard by taking grease from inside restaurant or using the sidewalk as a route to dispose of grease, plaintiff's speculation about grease was not backed up with evidence, and defendant had no actual or constructive notice of any hazard.

Workers' Compensation

Abandonment of workforce. State ex rel. Bonnländer v. Hamon, 2020-Ohio-4269 | Supreme Court of Ohio | 9/2/20 In employee's action claiming permanent total disability compensation after sustaining injuries in a work-related vehicle accident, appeals court did not err in declining to vacate the decision of the industrial commission denying the claim where the employee failed to work or seek work after the commission found him capable of sustained employment, which is evidence that he voluntarily abandoned the workforce prior to becoming permanently disabled, and the existence of conflicting evidence does not render the commission's determination an abuse of discretion.

Basis for decision. State ex rel. Merritt v. Indus. Comm., 2020-Ohio-4379 | Supreme Court of Ohio | 9/11/20 Denial of petition for a writ of mandamus to compel the commission to vacate its denial of the claimant's application for temporary total disability on reasoning that the claimant voluntarily abandoned his position by violating employer's drug-free workplace policy is reversed since the order does not specifically state the evidence relied on to conclude that the claimant was terminated for violating employer's policy; case is remanded for the commission to enter a new order identifying what evidence the commission relies on for its conclusion and explaining the reason for their decision, Noll and Mitchell.

Surgery. State ex rel. Omni Manor, Inc. v. Indus. Comm., 2020-Ohio-4422 | Supreme Court of Ohio | 9/16/20 In workers' compensation action where commission authorized employee's reimbursement request for surgery to repair an injury approved as an allowed condition, appeals court did not err in denying employer's petition for writ of mandamus to compel commission to vacate its order since physician's report satisfied the Miller test in recommending surgery for the allowed condition and not merely aggravation

of a pre-existing condition, and the report and C-9 form were consistent, unambiguous and constituted some evidence in support of authorization.

Employment status. Greco v. Cleveland Browns Football Co., L.L.C., 2020-Ohio-4745 | 8th Appellate District | 10/1/20 In players' workers' compensation claims arising from injuries sustained while playing football for team which argued that claims were barred by statute of limitations and that tolling exception did not apply on reasoning that physicians were independent contractors, summary judgment for players was not error since the team controlled the manner and means of physicians' work under the CBA and contract between the doctors, the team was responsible for paying cost of medical services according to the CBA, and the payments satisfied the tolling requirement under R.C. 4123.84.

Temporary total disability. State ex rel. Ryan Alternative Staffing, Inc. v. Moss, 2020-Ohio-5197 | 10th Appellate District | 11/5/20 Petition for writ of mandamus seeking to compel industrial commission to vacate order that awarded temporary total disability compensation to claimant is granted since the commission determined that employer's offer of suitable alternative employment was made in good faith, and once that determination was made, the commission was precluded from considering claimant's reason for refusing the offer, R.C. 4123.56(A) and Ohio Adm. Code 4121-3-32(A)(6).

Settlement. State ex rel. Zarbana Industries, Inc. v. Hayes, 2020-Ohio-5200 | 10th Appellate District | 11/9/20 In claim for Violation of a Specific Safety Regulation where respondent suffered severe injury when his hand was caught in equipment which was missing a guard, resulting in parties' proposed settlement, relator-employer's petition for writ of mandamus compelling industrial commission to accept parties' settlement agreement is denied where staff hearing officer found the proposed agreement was unfair and inequitable and disapproved it as inappropriate for a significant specific safety requirement claim, and commission did not have a duty to approve the proffered settlement, Ohio Adm. Code 4121-3-20(F)(1).