



Ohio case law summaries from Aug. 2 – Oct. 31

In Case You Missed It: The following are selected summaries of cases decided by Ohio courts between Aug. 2, 2022 – Oct. 31, 2022. To view all of the decisions issued in this time period or to read the selected cases in their entirety, please visit ohioabar.org/greenbook where you can search by case name or view by date

Administrative and Regulatory

Dine Safe Order/Disorderly conduct.

[I Love This Bar, L.L.C. v. Ohio Liquor Control Comm. | 2022-Ohio-3509 | 10th Appellate District | 09/30/2022](#)
Affirming liquor control commission's finding that bar violated Ohio Adm. Code 4301:1-1-52(B)(1) (Rule 52) was error where the bar was investigated by commission for alleged violation of "Dine Safe Order," and in an effort to enforce that order relied solely on the disorderly conduct statute, R.C. 2917.11, as the basis for finding that the bar engaged in disorderly conduct, and thereby, violated Rule 52, but there was no evidence presented to the commission that the bar recklessly caused inconvenience, annoyance, or alarm to another.

License revocation/Evidence. [W6 Restaurant Group, Ltd. v. Ohio Liquor Control Comm. | 2022-Ohio-3511 | 10th Appellate District | 09/30/2022](#)
In liquor license revocation proceedings involving alleged violation of department of health "Dine Safe Order," trial court, on appeal, erred in ruling that Ohio Adm. Code 4301:1-1-65 precluded the commission from admitting into evidence the affidavit of the interim director of the department since Ohio Adm. Code 4301:1-1-65(D) provides that the rules of evidence only generally govern hearings before the commission, hearsay evidence is admissible if not inherently unreliable and is sufficient to constitute substantial, reliable, and probative evidence, the reviewing court never found the affidavit statements inherently unreliable, and the license holder never argued that the affidavit was inherently unreliable.

Appeal/Timeliness/Mailbox rule. [Kyser v. Summit Cty. Children Servs. | 2022-Ohio-3467 | 9th Appellate District | 09/30/2022](#)
Dismissal of mother's administrative appeal for being filed untimely is affirmed where R.C. 2505.04 and 2505.07 provide that if notice of appeal is filed with the administrative

body after the 30-day period, the notice of appeal is untimely and the trial court lacks jurisdiction to consider the appeal; the App.R. 14(C) "mailbox rule" does not extend the time for filing an appeal and has no application to jurisdictional requirements of timeliness in filing an appeal with a court.

License revocation/Review test. [Aminatas Daycare, L.L.C. v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-3444 | 10th Appellate District | 09/29/2022](#)
Affirming state department's revocation of child care center's license was not error since, under R.C. 5104.04(D), the department has discretion to decide whether to revoke a license in the face of noncompliance with R.C. Ch. 5104 or Ohio Adm. Code Ch. 5101:2-12 and the trial court used the correct test in finding that the department presented reliable, probative and substantial evidence of numerous violations of child care licensing rules by the center and of the center's failure to show improvement over time, even though given repeated opportunities to improve.

Appeal/Due process. [W. Jefferson Properties, L.L.C. v. W. Jefferson Village Council | 2022-Ohio-3277 | 12th Appellate District | 09/19/2022](#)
In developer's administrative appeal of village council's rejection of its proposal to build a large mixed-use development, trial court's judgment affirming council's decision was not error since developer was not denied due process where developer's representative had the opportunity to present its position, R.C. 2506.03(A) did not require the trial court to allow developer to file a brief prior to issuing its decision where the transcript was available, and the developer failed to file an affidavit notifying the court that filed-recordings and documents did not comprise the complete transcript of all the evidence considered by council when issuing its decision.

Unauthorized practice of medicine/Notice. [State ex rel. Right to Life Action Coalition of Ohio v. Capital Care of](#)

[Toledo, L.L.C., | 2022-Ohio-3266 | 6th Appellate District | 09/16/2022](#)
In appellants' action asserting unauthorized practice of medicine in violation of R.C. 4731.34 and related claims, trial court's Civ.R. 12(B)(6) dismissal on reasoning that appellants lacked standing because they failed to satisfy the 30-day notice period prior to bringing an action against an alleged offender under R.C. 4731.341 was error since the statutory grant of standing to "any other person" is not conditioned on the 30-day notice, with no language within the statute linking this notice obligation to the standing of "any other person."

License/Skill-based amusement machine. [Dowling v. Ohio Casino Control Comm. | 2022-Ohio-2698 | 10th Appellate District | 08/04/2022](#)
In appellant's application to casino control commission seeking a license for skill-based amusement machine, commission's adjudication order denying license is affirmed where there is evidence that appellant gave false information on his application concerning a civil suit involving deceptive trade practices, his belief that he provided accurate and complete information was not enough to overcome the ultimate determination regarding suitability, and there is evidence that he was previously involved in selling counterfeit goods, which is indicative of overall character and integrity, R.C. 119.12.

Animal

Dangerous dog designation. [Fairfield Cty. Dog Warden v. Seifert | 2022-Ohio-2900 | 5th Appellate District | 08/18/2022](#)
In plaintiff-dog warden's action against defendant-dog owner for injuries sustained by third-party and her dog after they were bitten by defendant's dogs, trial court did not err in designating defendant's dogs as dangerous since the dogs attacked without provocation and caused injuries pursuant to R.C. 955.11(A)(1)(a),

Animal (Continued)

victim testified that both of defendant's dogs bit her and her dog, and injuries supported victim's testimony.

Aviation and Transportation

Unjust enrichment/Damages.

Continuum Transp. Servs., Ltd. v. Elite Internatl. Corp., L.L.C. | 2022-Ohio-3738 | 8th Appellate District | 10/20/2022

In plaintiff-trucking company's unjust enrichment and quantum meruit action against defendants-shipping agent and manufacturer to recover amount due on invoices for transporting goods, trial court did not err in awarding plaintiff the difference between the amount defendant-manufacturer paid shipping agent and the total amount due on invoices where, because defendant-manufacturer already partially paid defendant-shipping agent for delivery of goods, it was not required to also pay that amount to plaintiff, and the bedrock rule of carriage does not apply to impose full damages because the action was based on equity rather than contract.

Banking and Commercial

Collection/Mortgage Loan Act.

Forsythe Fin., L.L.C. v. Yothment | 2022-Ohio-2798 | 1st Appellate District | 08/12/2022 In third-party plaintiffs-borrowers' action against defendants-loan-broker and lender alleging unauthorized fees on loans in underlying collection action brought by finance company for borrowers' default, the trial court erred in dismissing complaint for failure to state a claim where the fee charged by loan-broker could be classified as principal under former R.C. 1321.51(D) in violation of the Mortgage Loan Act, it may constitute interest exceeding permissible maximum rate allowed pursuant to former R.C. 1321.51(E), and if the fee is neither principal nor interest, the fee could constitute a prohibited charge under R.C. 1321.57(H)(1).

Construction

Contract/Arbitration/Non-signatories.

Peabody Landscape Constr., Inc. v. Welty Bldg. Co., Ltd. | 2022-Ohio-3565 | 5th Appellate District | 10/06/2022 In plaintiff-subcontractor's action against defendant-contractor for failure to pay full amount owed for work on project, pursuant to their subcontract, where plaintiff also filed a second complaint

against appellees-developers, that was consolidated with first case, trial court did not err in denying plaintiff's motion to compel appellees-developers to submit to arbitration since appellees were not signatories to the subcontract and therefore did not agree to arbitration, they were not defendant's agents, and the estoppel exception under R.C. 2711.03 does not apply because the non-signatory appellees are not attempting to invoke the arbitration clause.

Unjust enrichment/Damages/

Prejudgment interest. KN Excavation,

L.L.C. v. Rockmill Brewery, L.L.C. | 2022-Ohio-3414 | 5th Appellate District | 09/27/2022

In plaintiff-excavation company's unjust enrichment action seeking damages from defendants for unpaid construction work, resulting in a judgment for plaintiff, the trial court erred in ordering prejudgment interest on the damages award where prejudgment interest is provided for on contract claims under R.C. 1343.03(A), but unjust enrichment is quasi-contractual and lacks the essential elements of contract, and therefore the statute does not allow for award of prejudgment interest on plaintiff's judgment.

Contract/Included provisions/

Review. Four Elyria Co., LLC v. Brexton

Constr., LLC | 2022-Ohio-2989 | 9th Appellate District | 08/29/2022

In plaintiff-shopping mall owner's breach of contract action against defendant-contractor for failure to pay subcontractors for work done, summary judgment in favor of defendant is reversed on reasoning that the trial court failed to address plaintiff's argument that, although plans for the work in question were not incorporated into the parties' contract, the work was included in the contract because plans were issued and acknowledged prior to execution of the contract and the contract required defendant to notify plaintiff of any increase in the guaranteed maximum price; the case is remanded for the trial court to analyze plaintiff's argument to permit appellate review.

Consumer

Attorney fees. Homestead Interiors,

Inc. v. Hines | 2022-Ohio-3700 | 11th Appellate District | 10/17/2022 In carpet seller's action against homeowner for failure to pay amount owed for carpet installation where homeowner

filed a counterclaim asserting that seller violated the Consumer Sales Practices Act (CSPA), trial court erred in awarding seller attorney fees where R.C. 1345.09(F)(1) should have been applied rather than R.C. 1345.09(F)(2) because the supplier rather than consumer prevailed, and there was no analysis by the trial court about whether defendant's CSPA counterclaim was groundless or brought in bad faith pursuant to statute.

Consumer Sales Practices Act/Car

title. Lourey v. Westside Automotive

Group | 2022-Ohio-3673 | 8th Appellate District | 10/13/2022

In plaintiff's action against defendant-car dealership alleging violation of the Consumer Sales Practices Act for failing to transfer car title to her, it was not error to find no violation where immediate delivery of car to plaintiff was conditioned on cancellation if defendant failed to obtain financing, and although defendant failed to cancel sales contract within allowed time period, the contract was automatically cancelled when plaintiff failed to obtain financing, defendant did not commit a deceptive or unfair act by failing to transfer title to the car which plaintiff was not entitled to keep, and plaintiff failed to prove actual damages, R.C. 1345.02.

Appeal/Final appealable order. Scott

v. First Choice Auto Clinic, Inc. | 2022-

Ohio-3405 | 10th Appellate District | 09/27/2022 In plaintiff-vehicle owner's action against defendants-restoration shop alleging, inter alia, violation of the Consumer Sales Practices Act because body work had been done incorrectly, resulting in judgment and award of damages to plaintiff, defendant's appeal is dismissed for lack of a final appealable order where no judgment was entered on defendants' counterclaims, there was no Civ.R. 54(B) language of no just cause for delay, and judgment on plaintiff's claims did not render defendants' counterclaims moot.

Consumer Sales Practices Act/

Damages. McNichols v. Gouge Quality

Roofing, L.L.C. | 2022-Ohio-3294 | 4th Appellate District | 09/13/2022

In homeowners' Consumer Sales Practices Act (CSPA) and related claims action against roofing company for negligent performance of their contract, resulting in a partial judgment for homeowners, trial court did not err in denying their claim for treble damages under the CSPA since roofer's conduct in breaching the contract

did not constitute a deceptive or unconscionable act under R.C. 1345.02 where homeowners understood the contract, roofer performed all the terms of the contract, and roofer attempted to correct issues of unworkmanlike performance to satisfy homeowners.

Contracts

Indemnification/Garnishment. Burhill Leasing Corp. v. Graham | 2022-Ohio-3757 | 2nd Appellate District | 10/21/2022 In plaintiff's action seeking to enforce garnishment order against defendant based on defendant's agreement to indemnify third party's debt to plaintiff pursuant to a settlement agreement, denial of plaintiff's motion for summary judgment was not error since plaintiff failed to establish that defendant had money or property in his possession that belonged to third party for garnishment purposes, and plaintiff failed to have the court declare the validity and enforceability of the indemnification agreement, necessary to obtain judgment against defendant, R.C. 2716.21(F).

Breach/Season pass terms. Valentine v. Cedar Fair, L.P. | 2022-Ohio-3710 | Supreme Court of Ohio | 10/20/2022 In plaintiff's breach of contract and unjust enrichment action against defendant-amusement park for failure to refund money for season pass when park was closed due to pandemic, the trial court's judgment in favor of defendant is reinstated to apply the terms and conditions that plaintiff agreed to when she purchased the season pass from defendant, and according to those terms, defendant could change its dates of operation without advance notice and close rides and attractions "for weather or other conditions," including the government-mandated shutdown, so plaintiff's breach-of-contract action fails as a matter of law, and plaintiff cannot sue for unjust enrichment.

Breach/Disclaimed warranties. Banks v. Shark Auto Sales, L.L.C. | 2022-Ohio-3489 | 11th Appellate District | 09/30/2022 In car buyer's action against seller for selling her a faulty vehicle, judgment for buyer was error since the used vehicle constituted goods for purposes of R.C. 1302.01(A), buyer was not entitled to revoke the sale because seller disclaimed any warranties by selling vehicle "as is," and buyer had the full opportunity to inspect the vehicle for defects, R.C. 1302.66(A), 1302.29(C)(2).

Non-compete/Breach/Damages. Stark Ambulatory Surgical Ctr., L.L.C. v. CS Anesthesia, L.L.C. | 2022-Ohio-3305 | 5th Appellate District | 09/20/2022 In surgical center's action seeking a declaration that liquidated-damages clause in agreement with medical staffing company was void after staffing company terminated agreement, prompting surgical center to directly hire nurses who had been employed by staffing company, thereby breaching the parties' agreement's non-solicitation clause, summary judgment in favor of staffing company was not error where damages for breach of contract were uncertain in amount and difficult to prove at execution of contract, the contract was not unreasonable and could justify the conclusion that it expressed the parties' intention, and the amount of liquidated damages was not unreasonable.

Settlement agreement/Oral/Statute of frauds. Waterfront, L.L.C. v. Shia | 2022-Ohio-3259 | 2nd Appellate District | 09/16/2022 In plaintiff-mortgagee's foreclosure action against defendant-property owner for failure to make scheduled payments on note, resulting in a settlement agreement, trial court did not err in enforcing the agreement where, although the agreement was not reduced to writing, the error was invited because defendant refused to sign off on the agreement after agreeing to its terms, the agreement had sufficient particularity to form a binding contract, the statute of frauds did not apply to an in-court settlement agreement, and defendant had the ability to negotiate the final terms, but failed to do so.

Breach/Arbitration/Party. Choice Hotels Internatl., Inc. v. C & O Developers, L.L.C. | 2022-Ohio-3234 | 8th Appellate District | 09/15/2022 In action for breach of franchise contract, which contained an arbitration provision, arising from failure to make loan payments, by plaintiff-hotel company against defendants-franchisees, who had assigned their rights and obligations under the contract, and against the ultimate borrower, trial court did not err in denying defendants' motion to stay proceedings pending arbitration since defendants were not parties to the franchise contract, and the loan documents are not "related agreements" as that term is used in the franchise contract's arbitration provision; also, after assigning all their rights in the franchise contract, defendants-franchisees relinquished the right to

enforce the arbitration provision, even though they personally guaranteed assignee's obligations.

Breach/Bad faith/Attorney fees. Vandercar, L.L.C. v. Port of Greater Cincinnati Dev. Auth. | 2022-Ohio-3148 | 1st Appellate District | 09/09/2022 In plaintiff-developer's breach of contract and bad-faith claims against defendant-assignee of plaintiff's interest in contract to redevelop hotel, alleging defendant's failure to pay second fee, trial court did not err in granting summary judgment to plaintiff on the contract claim, but the trial court erred in denying plaintiff's bad faith-based claim for attorney fees on reasoning that there was no indication of bad faith since plaintiff may recover attorney fees if it can establish bad faith on the part of defendant either from conduct giving rise to the claim or from conduct during litigation; also, the trial court properly dismissed the bad-faith claim as a separate, stand-alone cause of action since the bad-faith claim was subsumed in the breach of contract claim.

Breach/Limitations/Savings statute. L.E. Lowry Ltd. Partnership v. R&R JV, L.L.C. | 2022-Ohio-3109 | 5th Appellate District | 09/06/2022 In plaintiff-property seller's breach of contract action against defendant-purchaser for failure to pay full purchase price due to dispute over usability of a portion of the property, the trial court erred in dismissing the complaint as untimely where, although the parties modified the contractual statute of limitations to suit their purposes, they did not address the application of the savings statute, R.C. 2305.19, and therefore the savings statute applies to the contract.

Breach/Business purchase/Misrepresentations. Lakhi v. Meritra Health Care, L.L.C. | 2022-Ohio-3062 | 10th Appellate District | 09/01/2022 In plaintiff's breach of promissory note action against defendants-guarantors for failure to make payments on promissory note and to perform on personal guarantee in purchase of business, trial court did not err in granting summary judgment to plaintiff since defendants' evidence provided on summary judgment, claiming fraud, negligent nondisclosure and related claims, demonstrates that they did not rely on plaintiff's failure to provide financial documentation and thus did not rely on any alleged misrepresentations or nondisclosures in agreeing to purchase business.

Contracts (Continued)

Breach/Damages/New trial. Molai v. Standing Rock Cemetery Bd. of Trustees | 2022-Ohio-3004 | 11th Appellate District | 08/20/2022 In plaintiff's breach of contract and related claims action against defendant-cemetery for removal of poles and posters installed on son's grave, resulting in a significant damages award to plaintiff on the contract claim, the trial court did not err in granting defendant's motion for a new trial since Civ.R. 59(A)(5) provides that a new trial may be granted where there is an error in the amount of recovery, jury's award of compensatory damages clearly placed plaintiff in a much better position than if the contract had been performed, and plaintiff did not present evidence suggesting that he was entitled to amount awarded.

Corporate and Business

Fiduciary duty/Damages. Daly v. Rowe | 2022-Ohio-3750 | 1st Appellate District | 10/21/2022 In plaintiff's breach of fiduciary duty action against defendant-former business partner for selling their tape product without authorization and keeping all the proceeds after evicting plaintiff from their business premises where the trial court found in favor of plaintiff, the court erred in ruling that plaintiff failed to prove the amount of alleged lost profits since, although damages established by plaintiff were imprecise, they were not speculative because he provided historical testimony about corporation's annual earnings and his share of earnings in the period prior to eviction.

Derivative action/Pleading. Gilcrest v. Gilcrest | 2022-Ohio-3640 | 5th Appellate District | 10/12/2022 In sister's derivative action against partnership, alleging improper management and distribution of family partnership assets on death of parents, trial court did not err in granting partnership's motion to dismiss where sister failed to cite to any pre-suit efforts made to obtain the requested action, she did not demonstrate why efforts would have been futile, and she did not show that she fairly and adequately represented the interests of other shareholders similarly situated to meet the requirements of R.C. 1782.58 and Civ.R. 23.1.

LLC operating agreement/Capital contribution/Derivative action. Carter v. Univ. Park Dev. Corp. | 2022-Ohio-3462 | 9th Appellate District | 09/30/2022 In action by plaintiff-real estate investor against defendants-LLC and other entities for breach of contract and related claims, asserting that defendant-LLC's capital contribution to new development project-LLC was less than the amount specified in their operating agreement, the trial court did not err in ruling in favor of defendants on all claims since, inter alia, under the version of R.C. 1705.09(A) in effect when the new development-LLC was formed, the contributions of a member could be made in a variety of ways, including cash and property, so there was no requirement for defendant-LLC's contribution to be made only in cash; also, plaintiff did not have standing to bring his member derivative-action claim because new development-LLC was member-managed and R.C. 1705.49 provides derivative authority only to members of LLC's in which the management is not reserved to its members.

Redemption of member interest/Settlement/Arbitration. Cedar Brook Fin. Partners Holdings, L.L.C. v. Schlang | 2022-Ohio-3325 | 8th Appellate District | 09/22/2022 In plaintiffs-financial advisors' tortious interference with business relations action against defendant-equity member, alleging that defendant's demand for payment on plaintiffs' purchase of his membership interest pursuant to redemption agreement, which contained windfall and suspension provisions, was a breach of the suspension provision and subsequent settlement agreement, trial court did not err in granting defendant's motion to compel arbitration where the dispute arose out of the parties' business activities as members of the Financial Industry Regulatory Authority, and therefore all claims were subject to arbitration under both the redemption agreement and FINRA Rule 13200.

Fraud/Stock options/Pleading. Malek v. eResearch Technology, Inc. | 2022-Ohio-3330 | 8th Appellate District | 09/22/2022 In plaintiff-company vice president's action against defendants-company and other officers, alleging fraud and negligent misrepresentation about the status of the company that resulted in plaintiff's decision to resign from company without exercising his stock options, summary judgment in favor of defendants was not error where

plaintiff failed to plead with particularity allegations of fact to show a cause of action for fraud, and his suspicions of fraudulent intent cannot be construed as evidence that defendants intended to defraud or mislead him into voluntarily resigning and foregoing purchase of options.

Criminal

Habeas corpus. State ex rel. Robinson v. Fender | 2022-Ohio-3701 | Supreme Court of Ohio | 10/19/2022 Court of appeals' dismissal of petition for writ of habeas corpus against warden of correctional institution was not error since petitioner is no longer an inmate at the correctional institution in the county that the petition had been filed after he was transferred to another correctional institution in a county not within the jurisdiction of the court of appeals in which the writ had been filed, R.C. 2725.03.

Aggravated murder/Death penalty. State v. Drain | 2022-Ohio-3697 | Supreme Court of Ohio | 10/19/2022 In a conviction by plea to, inter alia, aggravated murder with death penalty specifications affirmed, issues discussed included: validity of jury waiver and no contest plea; ineffective assistance and showing of prejudice, holding court proceedings during the COVID-19 pandemic; hearsay and opinion evidence; prosecutorial misconduct; sentencing issues, including sentencing opinion, constitutionality of the R.C. 2929.04(A)(4) aggravating circumstance, constitutionality of lethal injection; and independent sentence review of aggravating circumstances, mitigating factors, and proportionality review.

Discovery/Expert witness/Retrial. State v. Bellamy | 2022-Ohio-3698 | Supreme Court of Ohio | 10/19/2022 Crim.R. 16(K) precludes an expert witness from testifying only at the trial commencing fewer than 21 days after the required disclosure is made and does not preclude otherwise admissible expert testimony at a defendant's retrial since defendant has had full notice of such evidence, Crim.R. 16(A) and Boaston.

Disclosure by public official/Ethics law. State v. Towns | 2022-Ohio-3632 | Supreme Court of Ohio | 10/18/2022 In a conviction of disclosure by a public official, R.C. 102.03(B), involving sheriff's release of confidential child abuse reports on the sheriff's office website in violation of Ohio ethics law, a person

who is subject to the jurisdiction of the Ohio Ethics Commission may be criminally prosecuted for a violation of R.C. 102.03(B) without the Commission's first investigating or prosecuting the charge since R.C. 102.06 provides a method by which ethical issues may be considered and resolved, but that method is not a prerequisite for criminal prosecution.

Habeas corpus/Mootness. State ex rel. Johnson v. Foley | 2022-Ohio-3634 | Supreme Court of Ohio | 10/18/2022 Appeal of court of appeals' denial of petition for habeas corpus against prison warden alleging that sentencing errors entitled petitioner to immediate release is dismissed as moot since petitioner has been released from prison and placed under post-release control supervision.

Mandamus. State ex rel. Scott v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-3635 | Supreme Court of Ohio | 10/18/2022 Appeal of the court of appeals' Civ.R. 12(B)(6) dismissal of inmate's amended petition for a writ of mandamus against the respondent department was not error since the trial court unambiguously imposed an aggregate prison sentence in two cases of ten years since the three-year weapon specifications in each case were required to be run consecutively to the concurrent sentences of seven years in each case, and therefore the aggregate sentence was ten years, not seven years, and thus relator's sentence has not expired.

Search/Consent. State v. Campbell | 2022-Ohio-3626 | Supreme Court of Ohio | 10/13/2022 After a conviction of robbery and imposition of prison sentence, appellant was granted judicial release and ordered to serve community control for the remainder of his sentence, and a probation officer, pursuant to a consent form included in the judicial release, performed a search of appellant's home and discovered child pornography on appellant's phone, conviction of eight felonies based on the search was not error since there was no constitutional violation of the Fourth Amendment and, since no exclusionary remedy is included in the judicial release statute for an unauthorized search, even if probation officer had no reasonable grounds to believe that appellant had violated the law or the conditions of probation, the search was valid.

Sentencing/Aggravated murder. State v. Leegrand | 2022-Ohio-3623 | Supreme Court of Ohio | 10/13/2022 In a conviction of, inter alia, aggravated murder, in which the trial court sentenced defendant to "life in prison with the possibility of parole in 15 years," rather than "an indefinite term of fifteen years to life" as provided in R.C. 2929.02 that was reversed by the court of appeals, on appeal by the state, the Ohio Supreme Court holds that the trial court did not err since the failure of a sentencing entry to precisely track the language of the applicable criminal-sentencing statute does not render the sentence contrary to law.

Mandamus. State ex rel. Shine v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-3624 | Supreme Court of Ohio | 10/13/2022 In inmate's mandamus action against department's director to modify the date of relator's next parole hearing so that it is no more than ten years from the date he was first eligible for parole while he was in federal custody where the state sentence was to run concurrent to the federal sentence, the court of appeals did not err in granting respondent's motion to dismiss since relator has no clear legal right to have his next parole eligibility hearing occur less than ten years after the date of his first hearing subsequent to his transfer to state custody, Ohio Adm.Code 5120:1-1-10(B)(2).

Self-defense. State v. Stiltner | 2022-Ohio-3589 | Supreme Court of Ohio | 10/12/2022 Judgment of the court of appeals is vacated, and cause is remanded to the trial court for a new trial consistent with the opinion in State v. Brooks, ___ Ohio St.3d ___, 2022-Ohio-2478, ___ N.E.3d ___.

Self-defense. State v. Irvin | 2022-Ohio-3587 | Supreme Court of Ohio | 10/12/2022 Judgment of the court of appeals is vacated on the authority of State v. Brooks, ___ Ohio St.3d ___, 2022-Ohio-2478, ___ N.E.3d ___, and cause is remanded to that court for it to conduct a harmless-error analysis.

Sentencing/Reagan Tokes. State v. Smith | 2022-Ohio-3629 | 1st Appellate District | 10/12/2022 In a conviction by plea to aggravated vehicular homicide and aggravated vehicular assault, claim that the indefinite sentence imposed by the trial court for the offense of aggravated vehicular homicide pursuant to the Reagan Tokes Law is unconstitutional because it violated

the separation-of-powers doctrine and deprived an offender of adequate procedural due process is without merit, Guyton, nor does the Law violate the right to trial by jury, Rogers and Delvallie.

Self-defense. State v. Cobb | 2022-Ohio-3590 | Supreme Court of Ohio | 10/12/2022 Judgment of the court of appeals is vacated, and cause is remanded to the trial court for a new trial consistent with the opinion in State v. Brooks, ___ Ohio St.3d ___, 2022-Ohio-2478, ___ N.E.3d ___.

Evidence/Chain of custody. State v. Feagin | 2022-Ohio-3641 | 5th Appellate District | 10/12/2022 In a conviction of drug and weapon offenses, claim that the trial court erred by failing to exclude evidence that was at some point in the custody of an officer who was disciplined and later removed from the police force and that thus the chain of custody of evidence was broken because the officer was not called to testify at trial and that the officer was untrustworthy and had planted or tampered with evidence in order to frame defendant is without merit since there were three officers present when defendant was arrested, and the evidence bags were sealed and initialed by another officer, which is a credibility issue, not an admissibility issue.

Drug trafficking/Indictment/Due process. State v. Troisi | 2022-Ohio-3582 | Supreme Court of Ohio | 10/11/2022 In prosecution of properly licensed wholesale distributor and personnel for drug trafficking, the indictment must be dismissed without prejudice since, under R.C. 2925.03(A) (1) and (2), the state must prove that the wholesale distributor has failed to act in accordance with R.C. Ch. 4729, constitutional due process requires that the felony indictment set forth the nature and cause of the accusation, and in the instant case, the state did not meet the minimal standard where it did not list the specific elements of the offense of failing to act in accordance with R.C. Ch. 4729, and it also did not state what the defendants' offense was or provide a statute number.

Endangering child. State v. Guerra | 2022-Ohio-3609 | 3rd Appellate District | 10/11/2022 Bench conviction of endangering a child, R.C. 2919.22(A), (E) (2)(a), met the sufficiency and weight of evidence standards where defendant does not challenge that she had

Criminal (Continued)

custody or control of the injured child, and the record supports that the child suffered multiple injuries inconsistent with a fall that defendant failed to discuss or reveal to the child's mother, and the weight of evidence supports the finding that defendant created a substantial risk to the child's health or safety by violating her duty of care or protection.

Sentencing/Community control violation. State v. Carpenter | 2022-Ohio-3603 | 3rd Appellate District | 10/11/2022 Following a conviction by plea to tampering with evidence, R.C. 2921.12(A)(1), and imposition of community control, and defendant violated community control by being "unsuccessfully terminated" from a community control program, the trial court did not err by imposing the reserved prison sentence with jail-time credit, notwithstanding that defendant participated in the community control program for 174 days before he was terminated, since appellant was not fulfilling the conditions of a sanction in an exemplary manner, R.C. 2929.15(C), but rather violating a condition of a community control sanction.

Rape/DNA. State v. Jones | 2022-Ohio-3644 | 5th Appellate District | 10/11/2022 Conviction of, inter alia, two counts of rape of a person less than 13 years-old, R.C. 2907.02(A)(1)(b)(B), met the sufficiency and weight of evidence standards where child victim testified that appellant raped her and a victim's testimony concerning penetration need not be corroborated by medical evidence, defendant's DNA was found on the victim's underwear, the state presented testimony that the DNA found was not touch DNA but DNA from a bodily fluid and that there was a tear in the victim's hymen that could only be caused by sexual penetration, and both appellant and the victim tested positive for sexually transmitted chlamydia.

Felonious assault. State v. Jemison | 2022-Ohio-3597 | 12th Appellate District | 10/11/2022 Conviction of, inter alia, two counts of first-degree felony felonious assault, R.C. 2903.11(A)(2), met the sufficiency and weight of evidence standards where defendant, while being pursued by two troopers in their vehicles, knowingly caused or attempted to cause physical harm to both troopers by means of a deadly weapon when he deliberately

accelerated and rammed his vehicle into each of their cruisers and caused physical harm to both troopers.

Fair trial/Presence of defendant. State v. Taylor | 2022-Ohio-3611 | 11th Appellate District | 10/11/2022 In a conviction of domestic violence, R.C. 2919.25, and felonious assault, R.C. 2911.01, although the trial court did not err in having defendant shackled in light of his threats to shoot the trial judge and prosecutor, the court took measures to assure that the restraints would not be visible to the jury, and the record does not reflect that the jury observed the restraints, the trial court did err by holding a sentencing hearing without allowing defendant to be physically present due to his prior threats of violence, R.C. 2945.12 and Crim.R. 43(A), but defendant failed to demonstrate prejudice resulted from his presence at the hearing via video-link; also discussed, the Reagan Tokes Law is constitutional.

New trial/Juror misconduct. State v. Nian | 2022-Ohio-3639 | 5th Appellate District | 10/11/2022 Following a 2015 conviction of rape, R.C. 2907.02(A)(2), that was affirmed, 2021 federal court of appeals' holding that the trial court committed constitutional error and remanded the matter to conduct a Remmer hearing in which three jurors testified, two of whom testified that they were unaware of any issues concerning defendant's nationality or that he had any prior sexual misconduct, the trial court did not err in denying the motion for new trial, finding the complaining juror not to be credible based on her testimony and letters sent to the trial judge, and that testimony of the other two jurors was credible, Crim.R. 33(A)(2).

Evidence/Photographs. State v. Thompson | 2022-Ohio-3602 | 3rd Appellate District | 10/11/2022 In a conviction of drug and related offenses, admission into evidence of a photograph of a cigarette package showing a baggie of fentanyl contained inside, photographs of the syringes and spoons where they were found, rather than the actual items, did not violate Crim.R. 26 since the purpose of the rule is to provide "for the return of physical property held by the state to the owner before trial," Staff Notes to Crim.R. 26, and also the photographs were identified by law enforcement and photographs were indicated to be fair and accurate representations of how the items looked when they were found.

Joinder. State v. Benedict | 2022-Ohio-3600 | 3rd Appellate District | 10/11/2022 In a conviction of sexual offenses against a minor, claim that the trial court erred by not severing the counts in the indictment and by not ordering separate trials for 2015 offenses and the 2018 offenses pursuant to Crim.R. 8(A) is without merit since evidence of each crime joined at trial was simple and direct, and also the charged offenses were of the same or similar character.

Plea/Constitutional rights. State v. Bloom | 2022-Ohio-3604 | 3rd Appellate District | 10/11/2022 In a conviction by plea to possession of heroin, R.C. 2925.11(A), (C)(6)(a), the state concedes the trial court erred by failing to properly advise defendant of all of his constitutional rights as required by Crim.R. 11(C) since the court did not advise defendant that a plea would not require the state to prove the defendant's guilt beyond a reasonable doubt at a trial, Crim.R. 11(C)(2)(c), Veney; reversed and remanded.

Evidence/Other crimes/Party opponent. State v. Morris | 2022-Ohio-3608 | 3rd Appellate District | 10/11/2022 In a conviction of burglary and menacing by stalking, admission of other acts evidence was not error since a notebook excerpt found by law enforcement in defendant's vehicle was not inadmissible under Evid.R. 404(B) since the statements defendant made in his notebook do not refer to "other crimes, wrongs, or acts" but are his journalized ideas or thoughts but were admissible under Evid.R. 801(D)(2)(a) as statements of a party opponent.

Sentencing/Reagan Tokes. State v. Moran | 2022-Ohio-3610 | 11th Appellate District | 10/11/2022 Following convictions in four cases that were affirmed, and the Ohio Supreme Court on certified conflict on whether the Reagan Tokes Law sentencing provisions were not ripe for review decided Maddox, holding that such challenges are ripe for review, and it reversed Moran I for further proceedings consistent with Maddox, the court of appeals holds the Reagan Tokes Law sentencing scheme is not void for vagueness, and does not violate the separation of powers, right to trial by jury, nor rights to a fair trial and due process.

Plea/Withdrawal/Res judicata.

State v. Meister | 2022-Ohio-3569 | 1st Appellate District | 10/07/2022

Following a conviction by plea to three counts of rape, R.C. 2907.02(A)(2), claim that denial of 2021 pro se Crim.R. 32.1 motion to withdraw plea was error based on claim that plea was made unknowingly and involuntarily due to trial counsel's constitutional ineffectiveness by not challenging the lack of a preliminary hearing and the allegedly invalid indictment is without merit since claim could have been raised on direct appeal but was not, and thus subsequent challenge is barred by res judicata.

Sentencing/Consecutive sentences.

State v. Scott | 2022-Ohio-3549 | 8th Appellate District | 10/06/2022 In a conviction of, inter alia, aggravated robbery and felonious assault of two victims, subsequent vacation by the court of appeals of entire sentence, and imposition on re-sentencing of concurrent and consecutive prison sentences totaling 21 years with credit for time served was not error since the court made the R.C. 2929.14(C)(4) findings for the imposition of consecutive sentences, even though it failed to explicitly make the proportionality finding, since the court's statements during the sentencing hearing clearly indicated that it considered proportionality with respect to both the seriousness of defendant's conduct and the danger he posed to the public, Hollis.

Plea. State v. Bobo | 2022-Ohio-3555 | 8th Appellate District | 10/06/2022

In a conviction by plea to, inter alia, drug trafficking, plea was validly made where, although the trial court misinformed defendant during the plea hearing that he was entitled to good-time credit, an incorrect recitation of the law is partial compliance with the rule, Crim.R. 11(C)(2)(a), and defendant failed to demonstrate prejudice, Clark; also, although the court erred by sentencing defendant to an indefinite prison term under the Reagan Tokes Law without advising him of all the R.C. 2929.19(B)(2)(c) notifications at the sentencing hearing, it does not affect the validity of the underlying conviction; remanded for re-sentencing to provide the proper advisements.

Indictment/Dismissal. State v. Roberts | 2022-Ohio-3544 | 9th Appellate District | 10/05/2022

In appeal by the state of the trial court's dismissal with prejudice of indictment of theft from a person in

a protected class, R.C. 2913.02(A)(1), (B)(3), the trial court erred since the state moved to dismiss the indictment without prejudice, and the record shows no evidence or claim of constitutional or statutory violations of defendant's rights, Dixon and Malone.

Endangering children. State v. Starbird | 2022-Ohio-3518 | 3rd Appellate District | 10/03/2022

Conviction of endangering children, R.C. 2919.22(B)(1), (E)(2)(d), met the sufficiency and weight of evidence standards where claims made by defendant as to how the injuries to a five month-old infant occurred were determined to be improbable by both the emergency room physician who treated the infant and a child abuse pediatrician, with both testifying that to a reasonable degree of medical certainty the injuries did not result from a fall from a countertop while in a tub filled with water as claimed by defendant, but were the result of abuse, and the jury did not lose its way in making its credibility determinations.

Sentencing/Allied offenses. State v. Morrissey | 2022-Ohio-3519 | 3rd Appellate District | 10/03/2022

In a conviction of, inter alia, two counts of aggravated robbery and two counts of kidnapping involving two individuals, that on appeal the court of appeals held that each of the two counts were allied offenses of similar import for sentencing and, on remand, the state elected to proceed on the two counts of aggravated robbery, on defendant's appeal of the trial court's decision on remand, the court of appeals affirms, holding that the trial court complied with its instructions and the law of the case applies; also discussed, no plain error in denial of appellant's challenges to the constitutionality of the Reagan Tokes Law.

Court-appointed counsel fees. State v. Nelson | 2022-Ohio-3520 | 3rd Appellate District | 10/03/2022

In a conviction by plea to aggravated possession of drugs and failure to provide notice of change of address, the trial court did not err by ordering defendant to pay court-appointed counsel fees, R.C. 2941.51(D), where, as part of the plea agreement, the parties agreed to a joint recommendation that defendant pay his court-appointed counsel fees, and the trial court found that "[d]efendant has, or reasonably may be expected to have, the means to pay court-appointed-counsel fees," and any

error in the court's order was invited by defendant.

Search/Traffic stop. State v. Kay | 2022-Ohio-3538 | 5th Appellate District | 10/03/2022

In a conviction by plea to drug and weapons offenses, denial of motion to suppress was not error where officers had a reasonable, articulable suspicion to make a traffic stop for a traffic violation based on the vehicle not having proper license plate illumination, R.C. 4513.05(A), and claim that since the license plate was sufficiently visible because officers could read it is without merit since the stop took place on a lighted highway, and simply because officers were able to read the plate on a lighted highway and assisted by the headlights of their cruiser does not also mean the plate was properly illuminated as required by law; also, the Reagan Tokes Law is constitutional.

Sentencing/Drug offenses. State v. Wood | 2022-Ohio-3536 | 5th Appellate District | 09/30/2022

In a conviction of felony drug and money laundering offenses, the trial court erred in sentencing defendant as a major drug offender, alleging trafficking and possession of methamphetamine and cocaine where, although the trial court properly sentenced defendant to 11 years on each count, the court erred in sentencing defendant to an additional three years on each count for the major drug offender specifications pursuant to R.C. 2941.1410 since the additional prison terms are applicable only to offenses involving fentanyl-related compounds.

Sentencing/Concurrent sentences.

State v. Boykin | 2022-Ohio-3485 | 11th Appellate District | 09/30/2022 In a conviction by plea to two counts of violating a protection order and one count of menacing by stalking, R.C. 2903.211, imposition of maximum, consecutive prison sentences in the sentencing journal entry was error since the trial court expressed a clear intention at the sentencing hearing that each sentence would run concurrently and "not consecutively," and there is no mention of the R.C. 2929.14(C)(4) factors; reversed and remanded for the trial court to correct the record to accurately reflect that sentences be served concurrently.

Escape. State v. Anderson | 2022-Ohio-3486 | 11th Appellate District | 09/30/2022 Following release of defendant from prison, he was required to report to a community facility and, because he did not do so, he was indicted and convicted of escape, R.C. 2921.34(A)(3) and (C)(3), but the state failed to demonstrate that defendant was provided with proper notice of his post-release control conditions, or that at the time he failed to report to his parole officer that he knew when and how he was to report to his parole officer.

Search/Suppression. State v. Seem | 2022-Ohio-3507 | 6th Appellate District | 09/30/2022 In a conviction by plea to two counts of pandering obscenity involving a minor and two counts of pandering sexual matter involving a minor, denial of motion to suppress evidence seized from defendant's cell phone without a warrant was error since officer testified that when he reviewed the contents of the phone in defendant's garage, nothing he saw on the phone provided him with probable cause to believe that a crime had been committed and, without a warrant and without evidence that officer possessed probable cause plus exigency, the officer could not lawfully seize the phone.

Domestic violence. State v. Fanelli | 2022-Ohio-3498 | 6th Appellate District | 09/30/2022 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards that the victim was a household member with defendant since she presented unrefuted testimony that the parties were in a romantic relationship and lived together at her residence, meeting the statutory requirements in R.C. 2919.25(F), and jury did not lose its way in deciding that defendant was a household member with the victim.

Sentencing/Violent offender/Reagan Tokes. State v. Jackson | 2022-Ohio-3449 | 1st Appellate District | 09/30/2022 In a conviction by plea of second-degree felony felonious assault, R.C. 2903.11(A)(2), the trial court erred by classifying defendant a violent offender since he was not convicted of a predicate offense listed in R.C. 2903.41(A), and the trial court also erred by failing to provide the R.C. 2929.19(B)(2)(c)(i)-(v) notifications under the Reagan

Tokes Law at the sentencing hearing; remanded for the trial court to provide the required sentencing notifications and to delete the violent-offender classification from the sentencing entry.

Domestic violence/Reasonable parental discipline. State v. Thornton | 2022-Ohio-3452 | 1st Appellate District | 09/30/2022 Bench conviction of four counts of domestic violence, R.C. 2929.159(A), to defendant-mother's four minor children was supported by the weight of evidence since defendant failed to demonstrate that she was exercising reasonable parental discipline where her discipline caused "physical harm" to the children by creating substantial pain with a belt that left visible marks on them, and a responding officer was concerned enough that he punched through a screen at defendant's residence to attempt to grab the belt to stop defendant from striking her child again.

Sentencing/Resentencing. State v. Ross | 2022-Ohio-3510 | 10th Appellate District | 09/30/2022 Following a 2005 judgment sentencing appellant to five years of incarceration "to be served concurrently" with a federal sentence at an Ohio prison, the trial court's grant of 2021 "Motion to Sentence Defendant by Zoom or Other Electronic Means," and imposition of the originally recommended five-year sentence "to be served concurrently with [the federal case] at the Ohio Department of Rehabilitation and Correction" was error where record is not sufficiently developed and the sentencing entry is too ambiguous since a state judge sentencing a defendant for state crimes has no inherent authority to order where a previously imposed federal sentence will be served, and the ambiguity of the entry has rendered the merits of the assignment of error moot; cause remanded for re-sentencing.

Sentencing/Allocution. State v. Fowler | 2022-Ohio-3499 | 6th Appellate District | 09/30/2022 In a conviction of vehicular homicide, R.C. 2903.06(A)(2)(a), imposition of 18-month prison sentence was "contrary to law" and violated defendant's right of allocution because the trial court relied on information from a source outside of those authorized by R.C. 2929.19(B)(1)(a) requiring a sentencing court to consider only the record in imposing a sentence, Crim.R. 32(A)(1), where the judge relied on information that his wife told him about the accident that occurred near their

home that contradicted defendant's testimony about the accident.

Sentencing/Consecutive sentences. State v. Bricker | 2022-Ohio-3494 | 6th Appellate District | 09/30/2022 In a conviction by plea to three counts of violating a protection order, R.C. 2919.27(A)(1), although the trial court made the required R.C. 2929.14(C)(4) findings for the imposition of consecutive sentences in its sentencing journal entry, it failed to make those findings at the sentencing hearing; remanded for a new sentencing hearing.

Sentencing/Findings. State v. Moore | 2022-Ohio-3504 | 6th Appellate District | 09/30/2022 Following convictions of six counts of having a weapon while under disability and possession of cocaine, with the trial court merging for sentencing three counts of the weapons convictions as allied offenses of similar import, and the court of appeals' reversal for failure to merge all of the weapons convictions as allied offenses on remand for re-sentencing, the trial court failed to make the required R.C. 2929.11, 2929.12, and 2929.14(C)(4) findings on the merged weapons conviction; remanded to conduct a limited de novo sentencing hearing.

Jury/Jury question. State v. Cutlip | 2022-Ohio-3524 | 7th Appellate District | 09/30/2022 In two convictions of aggravated drug trafficking, although the trial court erred in answering a jury question after closing arguments and during deliberations where jury asked about the weight of drugs in three containers found during a search instead of advising the jury to rely on their collective memories of the evidence and to review the exhibits or by reading a segment of trial testimony to the jury, error was harmless because defendant failed to identify resulting prejudice since the quantities proposed by defendant's counsel during the colloquy with the court was also sufficient to support a conviction.

Drug offenses/Involuntary manslaughter. State v. Allen | 2022-Ohio-3493 | 6th Appellate District | 09/30/2022 Conviction of, inter alia, involuntary manslaughter and trafficking in fentanyl, arising out of the death of a person after ingesting fentanyl, met the sufficiency and weight of evidence standards where a few hours before decedent's death, defendant messaged her that he would bring drugs to her,

decedent messaged to defendant "I only did that one line it was fire," defendant messaged decedent to "Be careful," a plastic baggie found near the decedent contained cocaine and fentanyl with the DNA of appellant and victim on the baggie, and a doctor testified that but for the fentanyl, victim would not have died.

Evidence/Prior conviction. State v. Williams | 2022-Ohio-3476 | 9th Appellate District | 09/30/2022 In a conviction of domestic violence, R.C. 2919.25(A) and 2919.25(D)(4), denial of motion for mistrial was not error where defendant claimed the state improperly introduced evidence of defendant's prior convictions for domestic violence, but the record showed that the trial court accepted defendant's stipulation and did not permit the introduction of the evidence through the direct examination testimony of the officer on objection by defendant, and the court also instructed the jury to disregard the state's question to the officer.

Evidence/Hearsay/Self-defense. State v. Jackson | 2022-Ohio-3483 | 11th Appellate District | 09/30/2022 In a conviction of, inter alia, attempted murder, the trial court erred by excluding as inadmissible hearsay the statements made by alleged victim in a text message to another person and as to the specific statements the alleged victim made on live social media and in streams to defendant on the morning of the shooting since statements defendant attempted to enter into evidence were relevant to his claim of self-defense, Evid.R. 803(3), and statements regarding the conversation with the alleged victim via social media that morning were not offered to prove the truth of the matter asserted, but for defendant's mindset the morning of the shooting.

Search. State v. Boyd | 2022-Ohio-3523 | 7th Appellate District | 09/30/2022 In a conviction of rape and child pornography offenses, denial of motion to suppress evidence seized during search of defendant's Instagram account and the later search of his residences was not error since search warrant was not overbroad because it sought messages and photos from an Instagram account during a limited two-month period surrounding the screenshots and asked for associated information to confirm the identity of the user, the warrant listed the crimes for which the evidence would be used

if found, and police would not have been able to find messages related to the crimes being investigated without reading the messages provided by Instagram.

Sentencing/Allocution. State v. Lewis | 2022-Ohio-3468 | 9th Appellate District | 09/30/2022 In a conviction by plea to city code first-degree minor misdemeanor domestic violence, the trial court erred by failing to provide defendant with his right to allocution prior to the imposition of sentence, Crim.R. 32(A)(1), notwithstanding the trial court suspended 178 of the 180-day incarceration ordered since the court imposed several requirements that defendant must follow to avoid serving the remainder of the time, and the court also imposed a \$150 fine, and thus it cannot be presumed defendant's opportunity for allocution would have made no difference in his sentence.

Witnesses/Court's witness. State v. Patrick | 2022-Ohio-3470 | 9th Appellate District | 09/30/2022 In a conviction of domestic violence, R.C. 2919.25(A), the trial court did not err in calling alleged victim of domestic violence as a court's witness since a court's decision to call a witness on its own motion pursuant to Evid.R. 614(A) is within its discretion and will be reversed only for an abuse of discretion, and the trial court found that the witness' testimony would be beneficial to ascertaining the truth of the matter, and there was an indication that the witness' trial testimony would contradict a prior statement made to police and to the state by that witness, Walter.

Jury instructions/Disorderly conduct. State v. Brock | 2022-Ohio-3439 | 10th Appellate District | 09/29/2022 In a conviction of, inter alia, disorderly conduct, the trial court erred in its instructions to the jury by omitting from the instructions the elements in subsection (1) of City Code 2317.11(A) of "[e]ngaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;" remanded for a new trial on the lesser-included offense of disorderly conduct.

Weapon offenses/Having a weapon while under disability. State v. Vaughn | 2022-Ohio-3615 | 7th Appellate District | 09/29/2022 Bench conviction of two counts of having a weapon while under disability, R.C. 2923.13(B), met the sufficiency and weight of evidence standards that defendant constructively

possessed two firearms since, under the totality of the circumstances, it was reasonable for the trier of fact to find that defendant placed a handgun into the attic and that it was extremely likely he knew where the rifle was located since, when officers entered the residence he was in, he was found in the closet opening that had an entrance to the attic where officers found the weapons, and he appeared to be exiting the closet when an officer encountered him.

Search. State v. Grondin | 2022-Ohio-3366 | 9th Appellate District | 09/26/2022 In a conviction of, inter alia, two counts of drug possession, denial of motion to suppress seizure of contents in a safe in defendant's home was not plain error since claim that defendant had a reasonable expectation of privacy in the safe because it was in his home is without merit where his wife testified that the safe was hers, and thus he did not establish that the offenses he was convicted of are connected to his allegation that the officers exceeded the scope of his consent or their failure to administer Miranda warnings.

Witnesses/Truthfulness. State v. Kennedy | 2022-Ohio-3369 | 11th Appellate District | 09/26/2022 In a conviction of patient abuse, R.C. 2903.34(A)(1) and (C), the trial court erred in overruling objections to state's questions to its witnesses concerning their belief of the truthfulness of other state witnesses' testimony since witnesses are not permitted to offer opinions on the truthfulness of other witnesses because that is the function of the trier of fact to determine, Bowden.

Sentencing/Judicial release. State v. Gilbert | 2022-Ohio-3387 | 12th Appellate District | 09/26/2022 Following a 2018 conviction by plea to, inter alia, felonious assault, and imposition of consecutive sentences totaling four years, subsequent 2022 grant of motion for judicial release was error since the trial court failed to comply with R.C. 2929.20(J)(2) requiring it to list all factors described in that division that were presented at the hearing since the hearing record demonstrates that evidence relating to the likelihood of recidivism and the seriousness of defendant's conduct was presented by the parties, but the transcript of the judicial release hearing does not reflect that the trial court listed the factors that were presented.

Sentencing/Contempt. State v. Basile | 2022-Ohio-3372 | 11th Appellate District | 09/26/2022 In appeal of four consolidated cases involving, inter alia, drug offenses, defendant's outburst following the trial court's imposition of sentence, while entirely inappropriate and punishable as contempt of court, was an impermissible consideration outside of the R.C. 2929.11 and R.C. 2929.12 sentencing factors, Bryant; sentence modified to originally imposed 40-month prison term that the trial court ordered prior to increasing sentence to 60 months.

Sentencing/Jail-time credit. State v. Gates | 2022-Ohio-3386 | 12th Appellate District | 09/26/2022 Following defendant's arrest on multiple felony offenses and being jailed while also on community control in a prior case, he pled guilty to the offenses and admitted to the community control violation, with the trial court granting jail-time credit of 299 days, representing the entire time that he had been in jail since his arrest, the trial court erred by not granting any jail-time credit for the multiple felony sentence since the 15 days that he spent in jail from the day of his arrest until the day that he was remanded to custody in the community-control-violation case were related exclusively to the felony case.

Sentencing/Sanctions. State v. Howard | 2022-Ohio-3394 | 5th Appellate District | 09/26/2022 In a conviction by plea to fifth-degree felony heroin possession, R.C. 2925.11(A)(C)(6)(a), defendant was found eligible to serve her sentence under the "Targeted Community Alternatives to Prison," and sentenced to eight months at the county jail pursuant to R.C. 2929.34(B), claim that the trial court erred by imposing a term longer than six months is without merit since that applies only to violations of community control residential sanctions, and defendant was not sentenced to residential community control sanctions.

Evidence/Recording. State v. Singh | 2022-Ohio-3385 | 12th Appellate District | 09/26/2022 In a conviction of, inter alia, rape, the trial court did not err in permitting the state to admit a portion of defendant's recorded statement, Evid.R. 106, where the state sought to redact parts of the interview in which officer discussed bond, seriousness of the charges and possible punishments defendant faced since that part was

not needed to place any of defendant's prior statements or officers' questions eliciting defendant's statements into context; also, it was proper to redact the end of the video where defendant, alone in the interview room, cried and commented about the effects the charges would have on his life since they were not relevant and were exculpatory statements that do not fall within an exception to the general rule excluding hearsay.

Sex offender/Registration. State v. Ramsey | 2022-Ohio-3389 | 12th Appellate District | 09/26/2022 In a conviction for failure to register as a sex offender, R.C. 2950.05(F)(1), claim that because R.C. 2950.05(F)(1) does not explicitly state a level of culpability, recklessness is the implied mental state to be proven and is without merit since the language of R.C. 2950 and established Ohio case law support a finding that R.C. 2950.05(F)(1) indicates a plain legislative intent to impose strict liability, and the record shows defendant knew of the address change in advance of the eviction, and the trial court did not find that he could satisfy the affirmative defense of impossibility.

Drug offense/Possessing drug abuse instruments. State v. Ford-Delay | 2022-Ohio-3346 | 2nd Appellate District | 09/23/2022 Conviction of possessing drug abuse instruments, R.C. 2925.12(A), was not supported by sufficient evidence since the hypodermic needles found in defendant's purse had not been used because the statute requires that there be drug residue on needles, Davis.

Sentencing. State v. Bocock | 2022-Ohio-3344 | 2nd Appellate District | 09/23/2022 In a conviction by plea to receiving stolen property, R.C.2913.51(A), and having weapons while under disability, R.C. 2923.13(A) (3), imposition of a prison sentence of 36 months was error since the trial court induced guilty pleas with a promise of community control sanctions, and thus pleas were not made knowingly, intelligently and voluntarily; remanded for the trial court either to impose community control sanctions or to allow defendant to withdraw his guilty pleas, Dehart.

Sentencing/Reagan Tokes. State v. Clinton | 2022-Ohio-3353 | 6th Appellate District | 09/23/2022 In a conviction in multiple cases of, inter alia, second-degree felonious assault,

R.C. 2903.11(A)(1) and (D)(1)(a), the trial court did not violate the constitutional provisions of due process or the separation of powers by imposing a definite minimum of two years and an indefinite maximum of four years in prison for that offense pursuant to the Reagan Tokes Act in light of this circuit's decisions in Stenson and Lamar upholding the provisions of the Act.

Sentencing/Juvenile record. State v. Cruz | 2022-Ohio-3356 | 6th Appellate District | 09/23/2022 In a conviction by plea to, inter alia, aggravated murder, the trial court did not err in rejecting the joint recommendation for sentencing and imposing a sentence of three years plus life imprisonment with parole eligibility after 30 years where the court stated that it considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and properly considered defendant's criminal record, including his juvenile record and his relationship with the victim, and nothing in Hand prohibits a trial court from considering a defendant's prior criminal history, including juvenile adjudications, when weighing the factors in R.C. 2929.12, Villarreal.

Juv/Delinquency. In re B.G. | 2022-Ohio-3358 | 6th Appellate District | 09/23/2022 In adjudication of juvenile as delinquent of rape, R.C. 2907.02, and of unlawful restraint, R.C. 2905.03, the trial court did not err in denying a Juv.R. 29(F)(2) motion to postpone adjudication of delinquency or that the case be dismissed in the claimed best interest of the child and the community since the record shows that the occurrence was not consensual and involved the use of restraint and threats, and record is devoid of evidence that the court mistakenly believed that it was constrained in any way inconsistent with the language of Juv.R. 29(F)(2).

Sentencing/Gross sexual imposition. State v. Jones | 2022-Ohio-3349 | 2nd Appellate District | 09/23/2022 In a conviction by plea of two counts of third-degree felony gross sexual imposition of a person under 13 years-old, R.C. 2907.05(A)(4), and imposition of concurrent prison sentences of 60 months, the trial court was not required to make findings with respect to the presumption of incarceration pursuant to R.C. 2929.13(D)(2) since the presumption does not apply to a conviction for gross sexual imposition under R.C. 2907.05(A)(4), and also the presumption does not apply when

a court follows the presumption by imposing a prison term, R.C. 2929.13(D) (2).

Sentencing/Reagan Tokes. State v. Knox | 2022-Ohio-3331 | 8th Appellate District | 09/22/2022 In a conviction by plea to second-degree felony robbery, R.C. 2911.02(A)(2), and second-degree felony felonious assault, R.C. 2903.11(A) (1), in state's appeal of the trial court's imposition of two, two-year prison sentences to be served concurrently, the trial court erred by failing to impose sentence under the Reagan Tokes Law by finding it unconstitutional since this court of appeals has upheld the constitutionality of the Law in its en banc decision in Delvallie; reversed and remanded for re-sentencing under the Reagan Tokes Law.

Sentencing/Jail-time credit. State v. Harper | 2022-Ohio-3329 | 8th Appellate District | 09/22/2022 In a conviction of, inter alia, first-degree felony rape, R.C. 2907.02(A)(2), the trial court committed plain error in its calculation of jail-time credit where it only stated defendant had a "two-year jail credit" at sentencing, but did not specifically determine the precise number of days at the hearing and awarded 687 days of jail-time credit in the sentencing entry and, although the state concedes that the trial court erred, it erroneously calculated defendant was entitled to 716 days jail-time credit, but failed to use the sentencing hearing date and used the sentencing entry date that was entered two days later, and thus defendant is entitled to 714 days of jail-time credit.

Self-defense. State v. Woods | 2022-Ohio-3339 | 5th Appellate District | 09/22/2022 In a conviction of two counts of felonious assault, and of improper handling firearms in a motor vehicle, the state provided sufficient evidence that defendant did not act in self-defense since defendant testified his purpose in meeting a person was to sell drugs and that he armed himself before the meeting, and a reasonable person could find that by engaging in criminal activity while armed, defendant was at fault in creating the circumstances that resulted in the victim passenger in the other car being shot, and defendant could have driven away without firing wildly in the direction of the other vehicle.

Sentencing/Allied offenses. State v. Kuntz | 2022-Ohio-3376 | 4th Appellate District | 09/22/2022 In a conviction of, inter alia, kidnapping, R.C. 2905.01(A)(4), and rape, R.C. 2907.02, the trial court did not commit plain error in finding the offenses not to be allied offenses of similar import and not merging them for sentencing since the restraint and force used to drag the victim to a secluded location was separate and distinct from the force exercised during the rape, R.C. 2941.25(B).

Plea/Withdrawal. State v. Acosta | 2022-Ohio-3327 | 8th Appellate District | 09/22/2022 Following a 2014 conviction by plea to aggravated murder and abuse of a corpse, grant of 2021 Crim.R. 32.1 motion to withdraw plea was error where grant of motion was based on a witness' subsequent recanting of prior statements he made to police, but appellant had knowledge of what occurred on the day that the victim was killed and would have known if the witness' statements were true or false, but nevertheless he still entered a guilty plea after a full Crim.R. 11 plea hearing, thereby completely admitting his guilt, and "a counseled plea of guilty to a charge removes the issue of factual guilt from the case," Zimmer; the court notes its strict analysis of Crim.R. 32.1 motions conflicts with a number of other appellate districts.

Post-conviction relief/Ineffective assistance. State v. Hardman | 2022-Ohio-3309 | 1st Appellate District | 09/21/2022 Following a conviction of murder that was affirmed, denial of petition for post-conviction relief was error in part where the trial court held that res judicata barred claims of ineffective assistance of trial counsel where claims of ineffective assistance in advising appellant to reject state's plea offer and preventing or advising appellant against exercising his right to testify depend on evidence outside the record of alleged private conversations between appellant and trial counsel, as well as alleged private conversations between trial counsel and appellant's family members and girlfriend.

Mandamus. State ex rel. Pointer v. Ohio Adult Parole Auth. | 2022-Ohio-3261 | Supreme Court of Ohio | 09/21/2022 In inmate's pro se mandamus action to order relator to remove all false, incorrect, and misleading information from his file, order a new parole hearing, and allow him to review his file at the new hearing, the court of appeals did

not err in dismissing complaint for failure to comply with the filing requirements in R.C. 2969.25(A) since the required affidavit failed to identify the parties to the civil actions that relator disclosed, the courts in which those cases were filed, and the outcome of each case.

DNA testing/Post-conviction. State v. Livingston | 2022-Ohio-3312 | 1st Appellate District | 09/21/2022 Following a conviction of, inter alia, murder that was affirmed, denial of 2021 application for post-conviction DNA testing of untested items recovered at the crime scene for biological evidence or material was error since the trial court failed to make that determination pursuant to R.C. 2953.75 that requires the court to order the state to use reasonable diligence to investigate whether biological material had been collected and whether a sample of that material still existed, and then present those findings in a DNA-evidence report to the court and, without that information, the court could not reasonably determine whether a parent sample still existed to be tested, R.C. 2953.74(C)(1); remanded for the trial court to follow the appropriate statutory procedure.

Mandamus/Post-release control. State ex rel. Randlett v. Lynch | 2022-Ohio-3260 | Supreme Court of Ohio | 09/20/2022 In mandamus action seeking a writ to vacate trial court's nunc pro tunc order concerning the period of post-release control imposed following conviction of multiple sex offenses, court of appeals did not err in denying writ since relator lacks a clear legal right to the extraordinary remedy he seeks because the original imposition of post-release control at sentencing had not been appealed and thus was res judicata, and the nunc pro tunc entries reiterating the period of post-release control that were imposed at the sentencing hearing had no significant legal impact, Crim.R. 36 and Qualls.

Speedy trial. State v. Buckman | 2022-Ohio-3303 | 5th Appellate District | 09/20/2022 In a conviction by plea to first-degree misdemeanor assault, R.C. 2903.13, denial of motion to dismiss for speedy trial violation was not error where, although the speedy trial time was not extended by the dismissal of the action because the person named as the victim was withdrawn by the state and new charges were refiled against defendant with a corrected victim's

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name, the speedy trial time still had not been exceeded after consideration of the appropriate tolling events.

Joinder/Similarity. State v. Lucas | 2022-Ohio-3278 | 3rd Appellate District | 09/19/2022 In a conviction of drug offenses in three cases with two of the cases involving controlled drug buys by confidential informants and conviction of corrupting another with drugs and involuntary manslaughter in a third case, claim that the involuntary manslaughter and corrupting-another-with-drugs charges were dissimilar from the drug-trafficking and drug-possession charges in the other cases and not based on the same transaction is without merit since victim's death was closely tied to defendant's drug trafficking and the death was a direct and foreseeable consequence of defendant's decision to sell drugs to a known person who informed defendant that she planned to provide it to another person who died as a result of using the drugs, Crim.R. 13 and 8(A).

Plea/Withdrawal. State v. Artuso | 2022-Ohio-3283 | 11th Appellate District | 09/19/2022 Following a conviction by plea to grand theft, denial of "Motion to Vacate Plea" was not error where claim that a Brady violation in another criminal action for sexual assault against defendant led him to plead guilty to the subsequent grand theft charges because of the financial and emotional results of the conviction in the sexual assault action, it is not conclusive, and the trial court in this action was not required to accept it since the evidence, while compelling with regard to a witness' misconduct in handling the investigation in the sexual assault action, does little to exculpate defendant or compromise the knowing, intelligent and voluntary character of his plea in this case.

Confrontation Clause. State v. James | 2022-Ohio-3244 | 1st Appellate District | 09/16/2022 In a bench conviction of aggravated menacing, R.C. 2903.21, the trial court did not deprive defendant of his right to confront witnesses against him by limiting the scope of defense counsel's cross-examination of the alleged victim about a felonious assault charge filed against the victim on the same day of defendant's aggravated-menacing offense was charged where the trial court found that the indictment

against the victim was unrelated to the incident that gave rise to this action.

Sentencing/Jail-time credit. State v. Dearmond | 2022-Ohio-3252 | 2nd Appellate District | 09/16/2022 In a conviction by plea to robbery and imposition of 36-month prison sentence and grant of jail-time credit, the trial court erred by failing to calculate the appropriate amount of credit, and further erred by including the time that defendant would await transportation to prison, R.C. 2967.191 and 2929.19(B)(2)(g) (i); case is remanded for determination of amount of jail-time credit.

Nonsupport/Sentencing. State v. Brown | 2022-Ohio-3233 | 8th Appellate District | 09/15/2022 In a conviction by plea to criminal nonsupport in two cases, R.C. 2929.14(A)(5), trial court erred in advising defendant that a violation of his community control would result in a prison term of 36 months since the maximum potential prison term defendant could receive for violating his probation would be two consecutive 12-month sentences, and trial court also erred by prohibiting defendant from being near any location where alcohol was sold, served, or used since the community-control sanctions were not related to rehabilitation, administering justice, or ensuring good behavior as required by R.C. 2929.15(A) and Jones.

Sealing. State v. W.C. | 2022-Ohio-3235 | 8th Appellate District | 09/15/2022 Denial of motion to seal applicant's criminal records of tampering with records, R.C. 2913.42(A)(1), a first-degree misdemeanor, and unauthorized use of property, R.C. 2913.04(D), a fifth-degree felony, was error where trial court failed to make the findings required by R.C. 2953.32(C)(1) concerning appellant's interest in having the records sealed, the government's need to maintain the records, and whether appellant had been rehabilitated to the satisfaction of the trial court.

Habeas corpus. Pope v. Bracy | 2022-Ohio-3190 | Supreme Court of Ohio | 09/14/2022 In inmate's pro se habeas corpus petition to compel warden to release him, the court of appeals did not err in granting respondent's Civ.R. 12(B)(6) motion to dismiss since relator's claim that the trial transcript in his underlying conviction does not indicate a response from all jurors which is an issue he could have raised on direct appeal but did not, and relator is barred

in a habeas corpus action from doing so by res judicata since relator does not provide any support for his claim that the trial court's judgment is void for lack of jurisdiction.

Habeas corpus. State ex rel. Foster v. Foley | 2022-Ohio-3168 | Supreme Court of Ohio | 09/13/2022 In pro se petition for a writ of habeas corpus against warden, the court of appeals did not err in dismissing action because petition failed to comply with the requirements of R.C. 2969.25(C) and 2725.04 since petitioner's inmate account statement did not comply with R.C. 2969.25(C) because it did not cover the six-month period preceding the filing of the petition, and the petition was not verified under R.C. 2725.04 because it was unsworn.

Evidence/Self-defense. State v. Rice | 2022-Ohio-3291 | 7th Appellate District | 09/13/2022 In a conviction of, inter alia, aggravated murder, R.C. 2903.01(A), (F), there was no evidence that defendant feared victim, and the physical evidence is inconsistent with defendant's testimony that he was defending himself where victim sustained gunshot wounds to the head, left forearm, left hand, left thigh, left hip and trunk, nor did the trial court err in barring defendant from presenting evidence of the victim's 2014 and 2016 alleged attacks on him since the 2016 incident did not involve a physical attack on defendant, and it is unclear from the police record of the 2014 incident whether victim was in a rage and had to be disarmed or that her cutting defendant's ear was part of a non-frenzied, non-lethal assault.

Discovery/Undisclosed witness. State v. Mitchell | 2022-Ohio-3176 | 9th Appellate District | 09/12/2022 In a conviction of domestic violence, R.C. 2919.25(A)/(D)(3), the state did not commit a discovery violation by calling a victim's advocate representative to testify that the victim stated that defendant was the father of her unborn child since the events that served as the basis for the witness' testimony did not occur until the first day of trial when the victim did not wish to testify, and thus the state could not have identified the victim's advocate representative as a witness prior to trial and, moreover, the witness' conversation with the victim was admissible since it provided insight as to why the victim at trial recanted portions of her initial statement to the police about the incident.

Sentencing/Jail-time credit. State v. Pfeifer | 2022-Ohio-3184 | 3rd Appellate District | 09/12/2022 In a conviction by plea to second-degree felony burglary and sentence to an agreed recommendation of five years of community control, violation of community control and imposition to agreed sentence recommendation of three years in prison with eligibility for judicial release after six months, subsequent grant of judicial release and then violation and revocation of judicial release with the three-year prison sentence reimposed, the trial court erred by failing to determine the jail-time credit for time served, R.C. 2929.19(B)(2)(g)(i); remanded for determination of jail-time credit earned.

Sentencing/Jail-time credit. State v. Foust | 2022-Ohio-3187 | 3rd Appellate District | 09/12/2022 In a conviction by plea to receiving stolen property and engaging in a pattern of corrupt activity, imposition of a prison term of four years and 11 months, subsequent grant and violation of judicial release with reimposition of a prison sentence of three years and 11 months, the trial court erred by failing to determine defendant's jail-time credit at the sentencing hearing, R.C. 2929.19(B)(2)(g)(i).

Witnesses/Spousal testimony. State v. Rose | 2022-Ohio-3197 | 11th Appellate District | 09/12/2022 In a conviction of aggravated murder, R.C. 2903.01(A), in which defendant's wife testified, although the trial court erred by failing to make an affirmative determination on the record that defendant's wife had elected to testify, the state overcame any spousal privilege issues by laying a foundation that third persons were present during defendant's statements; also discussed, defendant's flight, discarding of weapons and lies to police undermined his claim of self-defense.

Sentencing/Jail-time credit. State v. King | 2022-Ohio-3185 | 3rd Appellate District | 09/12/2022 In a conviction by plea to possession of drugs and tampering with evidence, imposition of agreed sentence recommendation of consecutive prison sentences totaling 48 months, grant of judicial release with five years of community control and subsequent violation of judicial release, the trial court erred by imposing the entire original prison terms for the offenses, rather than reimposing the

balance of prison terms as required by R.C. 2929.20(K) and by failing to determine the jail-time credit for time served, R.C. 2929.19(B)(2)(g)(i).

Jury instructions/Lesser-included offense. State v. Dixon | 2022-Ohio-3157 | 2nd Appellate District | 09/09/2022 In a conviction of, inter alia, murder, the trial court did not err in refusing to instruct the jury on the inferior-degree offense of voluntary manslaughter as a lesser-included offense of murder since defendant testified that the victim "lunged" at her and defendant testified that she fired the handgun at the victim because she was scared, worried and afraid of being assaulted by the victim, but "fear alone is insufficient to demonstrate the kind of emotional state necessary to constitute sudden passion or fit of rage," Mack; also, changes in the "stand-your-ground" law, R.C. 2901.09(B) and (C) do not apply retroactively, Degahson.

Evidence. State v. Biswa | 2022-Ohio-3156 | 2nd Appellate District | 09/09/2022 In a bench conviction of sexual imposition, R.C. 2907.06(A)(1), admission of a store's surveillance video of an encounter by defendant with the victim was not error since video was authenticated by victim's testimony as a witness to the incident involving her and defendant that the video was a fair and accurate depiction of the event, and the video was merely illustrative of her testimony; also, cell phone copies of surveillance videos are admissible under Evid.R. 1003.

Evidence/Forensic interview. State v. Glenn | 2022-Ohio-3159 | 2nd Appellate District | 09/09/2022 In a conviction of rape of a child under 13 and gross sexual imposition, the trial court did not err in denying defendant's request to introduce the child's entire forensic interview into evidence since it was not sufficiently authenticated because the social worker who interviewed the child stated that she did not recognize the handwriting or the case number and, moreover, the only portions that would be admissible were those statements that were made for the purpose of medical diagnosis and treatment, Arnold, and although the trial court told defense counsel that it would allow portions or clips of the video to be played if they were for purposes of medical treatment and diagnosis, defense counsel did not select any, nor did he proffer any of the statements.

Telecommunications harassment. State v. Arnold | 2022-Ohio-3147 | 1st Appellate District | 09/09/2022 Bench conviction of telecommunications harassment, R.C. 2917.21(B)(1), was not against the weight of evidence where, although there was no dispute that the original purpose for the telephone calls from defendant to the victim was either visitation with their child or to use the child to get into a shelter, defendant became upset when he did not get what he wanted and escalated the calls into threats to cause physical harm, to make the victim's life insufferable and to burn the house down that victim was living in if she did not bring their son to him.

Jury instructions/Self-defense. State v. Jones | 2022-Ohio-3162 | 2nd Appellate District | 09/09/2022 In a conviction of, inter alia, two counts of murder as a proximate result of committing felonious assault, the trial court erred in failing to instruct the jury on self-defense, R.C. 2901.05(B), that has been recognized as part of the castle doctrine and that in certain circumstances creates a rebuttable presumption that a person using defensive deadly force has acted in self-defense where the jury reasonably could have found that defendant was in a car lawfully and that the person who was shot by defendant unlawfully entered the vehicle by leaning in and reaching for defendant's weapon; remanded for further proceedings.

Evidence/Facebook. State v. Young | 2022-Ohio-3132 | 8th Appellate District | 09/08/2022 In a conviction of, inter alia, felonious assault, admission of Facebook records was not error where officer testified as to the authenticity of the photograph taken from defendant's Facebook page, there was no evidence that the Facebook page was created by anyone other than defendant, nor was there evidence that the page was fabricated or tampered with; also discussed, the trial court did not err in denying defendant's motion to dismiss counsel and his trial counsel's motion to withdraw, and defendant did not receive ineffective assistance of counsel.

Retaliation. State v. Bates | 2022-Ohio-3150 | 5th Appellate District | 09/08/2022 Conviction of retaliation, R.C. 2921.05(A), met the sufficiency and weight of evidence standards where the evidence demonstrated defendant acted in response to an eviction proceeding filed against him by

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an attorney representing the landlord and handled by an associate attorney, and the attorneys, by virtue of filing the eviction, had discharged some of their duties to their client when defendant engaged in disorderly and intimidating behavior in retaliation to the lawsuit filed against him.

Evidence/Hearsay/Confrontation.

State v. Carstaphen | 2022-Ohio-3129 | 8th Appellate District | 09/08/2022 In a conviction of, inter alia, two counts of felonious assault, the trial court did not err in admission of victim's out-of-court statements because they were not hearsay and did not violate defendant's Confrontation Clause rights since victim's statements to the responding officers on the scene and at the hospital were not testimonial because the statements were made to officers in the course of responding to an emergency situation since, until defendant was taken into custody, an ongoing emergency existed requiring a police response, and victim's statements to the responding officers were admissible under the excited utterance hearsay exception, Evid.R. 803(2).

Sentencing/Earned reduction. State v. Dirocco | 2022-Ohio-3221 | 7th Appellate District | 09/07/2022 In convictions by plea in two consolidated cases to, inter alia, second-degree felony burglary, R.C. 2911.12(A)(2)(D), and imposition of an agreed indefinite term of four to six years for the burglary conviction and concurrent prison sentences of lesser periods in the remaining concurrent prison sentences, the state concedes that the trial court erred in advising defendant that he was not eligible for a reduction in the minimum prison term for exceptional conduct pursuant to R.C. 2967.27(F)(1); remanded for re-sentencing pursuant to instruction to issue a nunc pro tunc order to remove the language that defendant is not eligible to receive an earned reduction in his sentence.

Criminal trespass. State v. Dean | 2022-Ohio-3105 | 12th Appellate District | 09/06/2022 In convictions in two cases against a husband and wife for third-degree misdemeanor criminal mischief, R.C. 2909.07(A)(1)(a), and fourth-degree misdemeanor criminal trespass, R.C. 2911.21(A)(2), conviction of husband

for criminal trespass on public library grounds was error where, although he committed criminal mischief by placing a sticker on the library's curbside pick-up box and on a traffic sign, that conduct was not also criminally trespassory solely on the basis of placing stickers on the objects, but the wife had been previously warned by police not to return to the library after having previously being removed from the library's property due to her unruly behavior on a prior occasion, Barksdale.

Jury/Verdict forms. State v. Buell | 2022-Ohio-3102 | 12th Appellate District | 09/06/2022 In a conviction of, inter alia, breaking and entering, R.C. 2911.13(A), and theft, R.C. 2913.02(A)(1), the trial court did not commit plain error by not providing the jury with separate verdict forms for principal offender and complicitor where defendant had argued that it was possible that an unknown and unidentified individual, and not himself, was the perpetrator of the theft and breaking and entering, and the state requested and the trial court provided a complicity jury instruction since there is no distinction between a defendant convicted of complicity or as a principal offender, McKelton.

Sentencing/Firearm specifications. State v. Beatty | 2022-Ohio-3099 | 12th Appellate District | 09/06/2022 Pursuant to App.R. 26(A)(2)(b), the court of appeals sua sponte en banc reconsiders its decision in State v. Beatty, 2022-Ohio-2329, and overrules the prior decision to the extent it conflicts with the court's holding in State v. Isreal, 2012-Ohio-4876, that, "pursuant to R.C. 2929.14(B)(1)(g), sentences for multiple [firearm] specifications should be run consecutive to each other," and to the extent the prior Beatty opinion allows a trial court to do anything other than sentence a defendant on a firearm specification to a consecutive sentence, it is overruled.

Interception of communications/Constitutionality. State v. Nohra | 2022-Ohio-3115 | 11th Appellate District | 09/06/2022 In prosecution of, inter alia, prohibition against interception of communications, R.C. 2933.52(A)(1) and (C), and wiretapping, R.C. 2933.52(A)(3), alleging that defendant-school superintendent installed a covert audio/video surveillance camera that recorded private communications of five school district employees, grant of defendant's "Motion to Dismiss Indictment as Statute is Vague and Indefinite" was error

since the facts of the case are still in dispute, and any determination of what constitutes an "oral communication" pursuant to R.C. 2933.51(B), and that it is unconstitutional as applied is premature; remanded for further examination of the facts that the indictment was based on.

Evidence/Harmless error. State v. Sutherland | 2022-Ohio-3079 | 2nd Appellate District | 09/02/2022 In a conviction of two counts of rape of a child under age ten, although it was error to send to the jury all of the state's report on defendant's internet searches that were not admitted at trial, the trial court did not err in denying defendant's motion for mistrial on this error since error was harmless in light of the trial court's curative instruction to jury not to consider the unadmitted material, both parties assented to the content of the curative instruction, and each juror explicitly denied using or considering the unadmitted materials; also, conviction on one count of rape was reduced to gross sexual misconduct based on victim's testimony that described solely sexual contact, not conduct.

Sentencing/Allied offenses. State v. Greer | 2022-Ohio-3082 | 6th Appellate District | 09/02/2022 In a conviction of, inter alia, murder and felonious assault, the trial court did not err in not merging the offenses as allied offenses of similar import for sentencing since the harm caused when defendant shot the victim was separate and specific to the harm caused when defendant beat the victim when he fell to the ground after he was shot, R.C. 2941.25(B).

Violent offender database. State v. Perry | 2022-Ohio-3056 | 1st Appellate District | 09/02/2022 In a conviction by plea to felonious assault, R.C. 2903.11(A)(1), the trial court erred in classifying defendant a violent offender requiring him to register with Ohio's Violent Offender Database pursuant to R.C. 2903.41, et seq. since felonious assault is not a predicate offense listed in R.C. 2903.41; also discussed, the Reagan Tokes Law is constitutional, Guyton; remanded for nunc pro tunc correction of the sentencing entry.

Sentencing/Allied offenses. State v. Pugh | 2022-Ohio-3038 | 8th Appellate District | 09/01/2022 In a conviction by plea to second-degree felony burglary, R.C. 2911.12(A)(2), and two counts of second-degree felony felonious assault, R.C. 2903.11(A)(2), the trial court did not

commit plain error by not merging the offenses as allied offenses of similar import since defendant trespassed into an apartment with a gun and, after an argument with one of the two persons in the apartment, he then shot at the two persons, and thus the offenses did not arise from the same conduct and were dissimilar in import and committed with a separate animus from the burglary offense since the harms caused in the burglary and the two felonious assault offenses were distinct.

Appeal/Leave to appeal/Sex offender reporting. State v. Wright | 2022-Ohio-3068 | 10th Appellate District | 09/01/2022 Grant of state's motion for leave to appeal the trial court's grant of exemption to appellee from sex offender reporting requirements following grant of judicial release after conviction of sexual battery, R.C. 2907.03, and two counts of unlawful sexual conduct with a minor, R.C. 2907.04, was not error since R.C. 2950.11(F)(2)(c), (d) and (i) established the probability that the trial court erred by granting appellee an exemption from community notification pursuant to R.C. 2950.11(F)(2), Thomas and App.R. 5(C).

Evidence/Hearsay. New Lexington v. McCabe | 2022-Ohio-3110 | 5th Appellate District | 09/01/2022 In a conviction of first-degree misdemeanor assault, R.C. 2903.13, victim's and his wife's testimony concerning racist statements made by neighborhood children that occurred prior to the assault, including a child whose father was involved in the assault, was not impermissible hearsay since the statements were not admitted as truth of the matter asserted, Evid.R. 801(C).

Right to counsel/Waiver. State v. Rolf | 2022-Ohio-3049 | 5th Appellate District | 08/31/2022 In a conviction by plea to aggravated possession of a controlled substance, OVI and driving under OVI suspension, defendant made a valid waiver of his right to counsel under Crim.R. 44(A) after conferring with stand-by counsel, but imposition of a lifetime operator's-license suspension is reversed since the duration of suspension was not addressed at the sentencing hearing.

Sentencing/Community control. State v. James | 2022-Ohio-3019 | 1st Appellate District | 08/31/2022 In a conviction of assault, R.C. 2903.13, the trial court erred in sentencing defendant to a 180-day jail term to be served

consecutively to a community control sentence in another case and ordering him to stay away from the victim of the assault since a community control sanction cannot be imposed when the underlying sentence is a jail term, R.C. 2929.41 and Hitchcock, and since the stay-away order is also a community control sanction, it cannot be imposed when the underlying sentence is a jail term, Anderson.

New trial. State v. Brunner | 2022-Ohio-3013 | 5th Appellate District | 08/30/2022 Following a 1996 conviction of rape of one person and attempted rape of another person that was affirmed, 2018 motion for new trial was granted for the rape conviction following a DNA analysis, but the trial court's denial of Crim.R. 33 motion for new trial of the attempted rape conviction was error since if a new jury would find, based on the new DNA evidence, that defendant did not commit the charge of rape against defendant's cousin, the same jury could likely find that defendant did not commit the crime of attempted rape against his cousin's roommate.

Search. State v. Dunlap | 2022-Ohio-3007 | 11th Appellate District | 08/29/2022 In a conviction by plea to improperly handling firearms in a motor vehicle, R.C. 2923.16(B), denial of motion to suppress was error since officer did not have reasonable suspicion to continue a traffic stop to investigate whether defendant-registered owner, whose driving license was suspended, was driving because after officer determined defendant was a passenger in her vehicle, further actions taken to detain her were improper because, although the initial stop was justified, the continued detention of defendant once the officer determined there was no violation of the law was contrary to the Fourth Amendment, Chatton.

Sentencing. State v. Kindle | 2022-Ohio-2991 | 3rd Appellate District | 08/29/2022 In a conviction by plea to, inter alia, multiple sexual offenses and felonious assault of minors who were in defendant's care and of one adult victim, the trial court did not err in not merging multiple convictions of felonious assault and the underlying sex offenses as allied offenses of similar import since sexual conduct when one is aware of being HIV positive may

result in an incurable disease that the victim will be forced to deal with during the victim's lifetime and could result in the victim's death or being on lifetime medication, Ward, and the offenses occurred over a range of dates.

Search. State v. Lewis | 2022-Ohio-3006 | 11th Appellate District | 08/29/2022 In a conviction by plea to improperly handling firearms in a motor vehicle, R.C. 2923.16(B), denial of motion to suppress was error since the officer did not have reasonable suspicion to continue a traffic stop to investigate whether the registered owner, whose driving license was suspended, was driving because after officer determined defendant was not the registered owner, further actions taken to detain him were improper because, although the initial stop was justified, the continued detention of defendant was contrary to the Fourth Amendment once the officer determined there was no violation of the law that the stop was initiated to investigate, Chatton.

Sentencing/Reagan Tokes. State v. Dawson | 2022-Ohio-2984 | 12th Appellate District | 08/29/2022 In a conviction by plea to two counts of aggravated robbery with a deadly weapon and two firearm specifications, and imposition consecutive and concurrent sentences constituting an indefinite prison term of 11 to 16.5 years in prison, challenge to sentencing provisions of the Reagan Tokes Law is without merit since this court of appeals has upheld the Law as not vague nor violative of due process or the right of trial by jury, Hodgkin and Rose.

Sentencing/Reagan Tokes. State v. Printke | 2022-Ohio-2981 | 6th Appellate District | 08/26/2022 In a conviction by plea to felonious assault and abduction, imposition of an indefinite sentence of seven years to ten years and six months for felonious assault and a 24-month sentence for abduction to be served consecutively was not error since challenge to the constitutionality of the indefinite sentencing provisions of the Reagan Tokes Law, R.C. 2967.271, is without merit because this court of appeals has found the Law constitutional, Gifford; the court of appeals grants state's cross-appeal that the trial court erred in sentencing defendant by failing to properly calculate the maximum and minimum terms of the indefinite prison term.

Evidence/Relevancy. State v. Lamar | 2022-Ohio-2979 | 6th Appellate District | 08/26/2022 In a conviction of, inter alia, rape, the trial court did not err by allowing the state to introduce evidence that a third party, who was in an on again/off again relationship with defendant, attempted to convince victim not to cooperate in the investigation since the challenged testimony did not contain an obvious threat, there is no indication that the victim was afraid of defendant or the third party or that it affected her cooperation with police in their investigation, there was no unfair prejudice resulting from its introduction and it also placed into context why defendant reached out to the investigating officer after the conversation with the third party.

Failure to comply. State v. Nowak | 2022-Ohio-2980 | 6th Appellate District | 08/26/2022 Bench conviction of failure to comply with an order or signal of a police officer, R.C. 2921.331(B), and failing to give a turn signal met the sufficiency and weight of evidence standards where defendant's act of continuing to drive for 20 seconds until he reached his driveway, despite flashing lights and sirens from the officer's marked vehicle, established that defendant acted willfully and the trial court did not lose its way in making its credibility determinations, especially in light of the dashcam video supporting the officer's testimony.

Complicity/Little Hatch Act. State v. Gamble | 2022-Ohio-2964 | 7th Appellate District | 08/25/2022 In state's appeal of dismissal of complaint charging defendant with four counts of complicity, R.C. 2923.03(A)(1)-(2), for soliciting and aiding others to violate the Little Hatch Act, R.C. 124.57, the trial court erred in dismissing complaint based on its conclusion that since defendant could not be directly charged for violation of the Act on the grounds that he was not a classified employee and thus that he likewise could not be charged as complicit in such a violation, is without merit since the statute does not require the accomplice be subject to prosecution for direct commission of the offense to sustain a complicity charge, R.C. 2923.03.

DNA testing. State v. Gavin | 2022-Ohio-3027 | 4th Appellate District | 08/25/2022 Following a 2013 conviction of, inter alia, multiple heroin-related offenses and tampering with evidence that was reversed as to the tampering conviction but affirmed in all other respects, and numerous post-conviction motions, resulting in the reversal of the denial of a 2020 motion for leave to file a motion for new trial that remains pending, the trial court's summary denial of 2020 application for independent DNA testing at appellant's expense was error since R.C. 2953.71 et seq. does not govern nor limit testing performed at defendant's expense, and application should have been granted if there is a sufficient parent sample and the chain of custody can be maintained.

Witnesses/Lay opinion. State v. Cleavenger | 2022-Ohio-2942 | 9th Appellate District | 08/24/2022 In a conviction of kidnapping, felonious assault and abduction of girlfriend, challenge to SANE witness' testimony of her opinion concerning her observations of the victim is without merit since the SANE testimony was lay opinion, not expert testimony requiring prior submission of an expert report pursuant to Crim.R. 16(K) since her testimony was based on her personal knowledge and experience, Evid.R. 701 and Belle; also discussed, other acts evidence of victim, Crim.R. 404(B), and defendant could not use battered-woman syndrome argument against victim because of her prior relationship with another person.

Right to counsel/Waiver. State v. Sponsler | 2022-Ohio-2916 | 3rd Appellate District | 08/22/2022 In a conviction of three counts of possession of drugs, defendant did not knowingly and intelligently waive his right to counsel where defendant did not execute a written waiver of counsel as required by Crim.R. 44(C), and the record does not contain any showing that defendant properly waived that right.

Jury instruction/Accomplice. State v. Stephens | 2022-Ohio-2944 | 5th Appellate District | 08/22/2022 In a conviction of aggravated drug trafficking, R.C. 2925.03(A)(1)(C)(1)(f), the trial court did not commit plain error by not instructing the jury on accomplice testimony, R.C. 2923.03(D), where arresting officer testified that a person who was in the car with defendant at the time of the arrest stated the drugs

on his person and in the car were his since defendant did not request the accomplice-testimony instruction, and it would have been illogical for him to do so since he would have effectively been arguing both that the drug belonged to the passenger, but that person's admission of ownership was not credible.

Sealing. State v. G.K. | 2022-Ohio-2858 | Supreme Court of Ohio | 08/19/2022 Grant of application to seal records of dismissed counts in a 2014 conviction by plea to obstructing justice was error where dismissed counts were three counts of rape, one count of gross sexual imposition and one count of kidnapping since under former R.C. 2953.61, in effect at the time applicant filed his application, when multiple offenses have different dispositions, an application to seal a record may be filed only when the applicant is able to apply to have the records of all the offenses sealed, R.C. 2953.52, and a trial court does not have inherent authority to seal records since appellant was not "found not guilty in the case" nor was "the complaint, indictment, or information in the case dismissed," R.C. 2953.52(B)(4).

Animal cruelty. State v. Jennings | 2022-Ohio-2892 | 2nd Appellate District | 08/19/2022 Bench conviction of cruelty against a companion animal, R.C. 959.131(D)(1), and one count of depriving a companion animal of necessary sustenance, R.C. 959.131(D)(2), met the sufficiency and weight of evidence standards where defendant neglected to take his companion animal for medical treatment despite the animal being severely emaciated and having sores on legs, tail and paws, and that the emaciated condition quickly improved after being treated and removed from defendant's care, and veterinarian's testimony that the companion animal would not have been as thin as she was if she had been properly fed.

Evidence/Other acts. State v. Robinson | 2022-Ohio-2896 | 2nd Appellate District | 08/19/2022 In a conviction of arson, R.C. 2909.03(A)(1), admission of other acts evidence was not error since it was directly relevant to the identity of the arsonist and admitted for the sole purpose of establishing the identity of the individual who set fire to the victim's vehicle and outweighed any potential unfair prejudice to defendant, and the trial court gave a limiting instruction to the jury, Evid.R. 404(B).

Criminal trespass. State v. Randolph | 2022-Ohio-2909 | 6th Appellate District | 08/19/2022 Conviction of criminal trespass, R.C. 2911.21, was against the sufficiency and weight of evidence standards where defendant was on leased premises pursuant to permission of the tenant, Herman and Hites; the court of appeals certifies a conflict to the Supreme Court of Ohio pursuant to Ohio Const. Art. IV, Sec. 3(B)(4).

Evidence/Identity. State v. Dennis | 2022-Ohio-2888 | 2nd Appellate District | 08/19/2022 In a conviction of, inter alia, murder, security guard's testimony that he had seen defendant with a handgun during the week of the shooting of the victim was properly admitted evidence of identity under Evid.R. 404(B) since the issue of identity was in issue, and the trial court gave the jury a limiting instruction that the evidence was only for the narrow purpose of deciding identity and that it could not be considered to prove defendant's character and his conformity therewith.

Post-conviction relief. State v. Mott | 2022-Ohio-2894 | 2nd Appellate District | 08/19/2022 Following a 2019 conviction of felonious assault that was affirmed, the trial court erred in denying petition for post-conviction relief on the basis of res judicata since petitioner attempted to raise his claim of ineffective assistance of trial counsel for failing to interview, subpoena and call two alleged witnesses that petitioner claimed were present during the shooting with petitioner's gun while petitioner was fighting with petitioner, and petitioner filed the affidavits of the two individuals who averred that they were present during the shooting that constituted evidence outside the record in the direct appeal; cause is remanded.

Sentencing/Allied offenses. State v. Bella | 2022-Ohio-2884 | 1st Appellate District | 08/19/2022 In a conviction by plea to, inter alia, two counts of sexual battery, R.C. 2907.03(A)(2), and to illegal use of a minor or impaired person in nudity-oriented performance or material, R.C. 2907.323(A)(1), the trial court erred by not merging the sexual battery offenses as allied offenses of a similar import for purposes of sentencing since both offenses were based on defendant's raping of the minor while she was unconscious.

Dog at large/Dangerous dog at large. State v. Seifert | 2022-Ohio-2901 | 5th Appellate District | 08/18/2022 In a conviction by plea to one count of dog at large and one count of dangerous dog at large, R.C. 955.22(D)(1), the trial court's imposition of one-year community control prohibiting defendant from owning dogs during that time was not unreasonable since it involved the second time within 18 days that defendant's dogs were at large, and defendant disregarded the requirements of keeping his dangerous dogs properly confined after his dogs injured a person and nearly killed the person's dog.

Child endangering. State v. Messenger | 2022-Ohio-3120 | 7th Appellate District | 08/18/2022 In a conviction of endangering a child, R.C. 2919.22(A), and assault, R.C. 2903.13(B), the trial court erred in allowing the alleged victim, defendant's then eight year-old daughter, to testify from a different courtroom by way of closed-circuit television by concluding that the state demonstrated good cause for its failure to comply with the seven-day requirement in R.C. 2945.481(C) since the state failed to interview child witness more than seven days prior to trial, and the defense had inadequate time to prepare for the hearing or to formulate a strategy to overcome the prejudicial inference created by the manner of the alleged victim's testimony, nor was the error harmless.

Aggravated murder/Death penalty. State v. Whitaker | 2022-Ohio-2840 | Supreme Court of Ohio | 08/18/2022 Imposition of the death penalty for conviction of aggravated murder and two accompanying death-penalty specifications, committing the aggravated murder during an aggravated rape and committing the aggravated murder during a kidnapping, is affirmed where the specifications were proved beyond a reasonable doubt and the aggravating circumstances outweighed the mitigating factors beyond a reasonable doubt, R.C. 2903.01(A), (B) and 2929.04(A)(7); guilty finding on aggravated burglary specification was error since the house involved was not maintained as a permanent or temporary dwelling, and trial court's consideration of aggravated burglary as an aggravating circumstance during the mitigation phase constituted harmless error.

Double jeopardy. State v. Forbes | 2022-Ohio-2871 | 8th Appellate District | 08/18/2022 Following a conviction by plea in municipal court to city code OVI, subsequent conviction by plea to OVI, R.C. 4511.19(A)(1)(g), in the common pleas court was error since it was based on the same offense and thus is barred by the Double Jeopardy clauses of the United States and Ohio constitutions; OVI conviction in the common pleas court is vacated.

Sentencing/Allied offenses. State v. Philpotts | 2022-Ohio-2865 | 8th Appellate District | 08/18/2022 In bench convictions of, inter alia, aggravated murder, R.C. 2903.01(B), and aggravated robbery, R.C. 2911.01, the trial court did not err in not merging the offenses since aggravated murder is not an allied offense of similar import to aggravated robbery for purposes of R.C. 2941.25(A), Bickerstaff; also discussed, convictions met the sufficiency and weight of evidence standards.

Animal cruelty/Forfeiture. State v. Wolfe | 2022-Ohio-2921 | 4th Appellate District | 08/17/2022 In a conviction of cruelty to animals, R.C. 959.13(A)(1), grant of state's request at sentencing for the forfeiture of the abused dog to the county dog shelter was not error where defendant's claim that the state was required to follow the procedures for the forfeiture of property in R.C. Chapter 2981 is without merit since the trial court had express authority to order forfeiture of the dog pursuant to R.C. 959.99(D), and ordering the forfeiture of the dog as a community-control condition is reasonably related to rehabilitating defendant, to the crime committed by him, and to future criminality by preventing him from physically abusing the dog.

Railroad safety/Preemption. State v. CSX Transp., Inc. | 2022-Ohio-2832 | Supreme Court of Ohio | 08/17/2022 In an action charging railroad company with violating R.C. 5589.21 by stopping trains that blocked railroad crossings for more than five minutes, since R.C. 5589.21 regulates how long a train may remain stopped across a railroad crossing for switching, loading or unloading operations at an industrial customer's plant or to let another train pass, R.C. 5589.21 usurps the exclusive jurisdiction of the U.S. Surface Transportation Board and is preempted by the Interstate Commerce Commission Termination Act, 49 U.S.C. 10101 et seq., and the Federal Railroad

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Safety Act, 49 U.S.C. 20101 et seq., does not create an exception to the Termination Act's preemption of state law.

Sentencing/Community control. State v. Kay | 2022-Ohio-2862 | 5th Appellate District | 08/17/2022 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a), and improperly handling a firearm in a motor vehicle, R.C. 2923.16(B), imposition of community control sanction that defendant not remain in or reenter the county was not reasonably related to the probationary goals of doing justice, rehabilitating defendant and insuring his good behavior; also discussed, denial of motion to suppress was not error where firearm was in plain view in defendant's vehicle after he exited.

Search. State v. Wells | 2022-Ohio-2903 | 5th Appellate District | 08/17/2022 In a conviction by plea to drug and related offenses, denial of motion to suppress was not error since defendant lacked standing to challenge the search of a rental vehicle since vehicle was owned by a rental company, it was leased to someone other than defendant and rental agreement had lapsed; the trial court did err in finding defendant guilty of receiving proceeds of an offense subject to forfeiture, R.C. 2927.21, since the trial court did not advise defendant of the effect of a no contest plea to this count, Crim.R. 11.

Evidence/Admissibility. State v. Nigro | 2022-Ohio-2864 | 5th Appellate District | 08/16/2022 In a conviction of, inter alia, drug possession, text messages were properly admitted under Evid.R. 901 where the phone, together with two other phones, was found in the car that defendant ran from following a police pursuit, the phone contained messages to and from another passenger and suspect in the offense, the timing and content of the messages were consistent with the commission of the break-in, and the phone contained photos of defendant, Evid.R. 901.

Insanity/Commitment status. State v. Stutler | 2022-Ohio-2792 | Supreme Court of Ohio | 08/16/2022 Following finding of not guilty by reason of insanity in a prosecution for, inter alia, murder, and commitment to a mental health facility, the court of appeals erred in affirming the trial court's denial of recommended change in the commitment conditions in the absence

of clear and convincing evidence that the recommended change would result in a threat to public safety or any person and, since the record demonstrates that the trial court might have denied the requested change in the conditions of appellant's commitment based on factors other than those specified in R.C. 2945.401 concerning the state's burden of proof, cause is remanded to the court of appeals for it to consider the evidence under the appropriate standard.

Competency. State v. Scott | 2022-Ohio-2820 | 3rd Appellate District | 08/15/2022 In a conviction by plea to, inter alia, felonious assault, the trial court did not err in finding defendant competent to stand trial where defense counsel stated that defendant had mental health issues, but had not acted erratically during their interactions and discussed trial strategy and plea deals, and trial judge noted that she had interacted with defendant in court throughout the pendency of his case and had observed his ability to understand issues relating to the case, and a jail phone call recording defendant had with his girlfriend reflected an understanding of the roles of defense counsel and the prosecutor, his defenses and his possible defenses.

Jury instruction/Lesser included offense. State v. Villafranco | 2022-Ohio-2826 | 12th Appellate District | 08/15/2022 In a conviction of felonious assault, R.C. 2903.11(A)(2), the trial court did not err in denying defendant's request for a jury instruction on an attempt violation of the vehicular assault statute, R.C. 2903.08(A)(2)(b), since vehicular assault is not a lesser included offense of felonious assault since "attempted" vehicular assault is a legal impossibility because vehicular assault requires recklessness, while the attempt statute, R.C. 2923.02(A), requires a mens rea of purpose or knowledge.

Sentencing/Jail-time credit. State v. Mills | 2022-Ohio-2821 | 3rd Appellate District | 08/15/2022 Following defendant's placement on post-release control and conviction of new offenses, the trial court erred in imposing a 709-day prison term for the post-release control violation where appellant had accrued 216 days of jail-time credit instead of the 207 the trial court had calculated since the relevant time for determining the amount of time remaining on an offender's post-release control is at sentencing when post-

release control is terminated by the court, R.C. 2929.141(A).

Evidence/Authentication/Hearsay. State v. Jackson | 2022-Ohio-2805 | 2nd Appellate District | 08/12/2022 In a bench conviction of violating a protection order, R.C. 2919.27(A)(2), admission of video and text messages was not error where victim testified that the video was a fair and accurate depiction of what she had received, and her testimony was sufficient to authenticate the exhibit as the video that was texted to her, and the victim identified another exhibit that contained the text message that she received from a specific phone number; victim's testimony that defendant was in the video did not implicate hearsay and was sufficient to demonstrate that state's exhibit was the message she received that included a link to the video.

Search. State v. Toran | 2022-Ohio-2796 | 1st Appellate District | 08/12/2022 In a conviction by plea of carrying a concealed weapon, improper handling of a firearm in a motor vehicle and having a weapon while under a disability, denial of motion to suppress the evidence obtained during the traffic stop was error where, although the stop for improper display of a temporary license placard under former R.C. 4503.21(A)(3) was proper, the warrantless vehicle search was not a proper inventory search since the state did not present evidence regarding any standardized policy or procedures the officer was relying on for the vehicle search.

Plea/Validity. State v. Dean | 2022-Ohio-2803 | 2nd Appellate District | 08/12/2022 In a conviction by plea to no contest to telecommunications harassment, R.C. 2917.21(A)(1), plea was not voluntarily made where defendant was not informed of the effect of her plea since the trial court's explanation did not explain that a no contest plea is not an admission of guilt, that it is an admission of the facts alleged in the complaint, and that it could not be used against defendant in subsequent court proceedings, Crim.R. 11(B); remanded.

Sentencing/Reagan Tokes/Consecutive sentences. State v. Clark | 2022-Ohio-2801 | 2nd Appellate District | 08/12/2022 In a conviction by plea through a global agreement in seven consolidated cases of, inter alia, murder, and imposition of consecutive and concurrent sentences totaling 22 years

to life in prison: the trial court failed to provide certain notices at sentencing required by the Reagan Tokes Act, R.C. 2929.19(B)(2)(c); although the trial court omitted a consecutive sentence finding from three judgment entries, the findings were not required because the sentence was an agreed sentence; the trial court did not commit reversible error by imposing prison sentences and no-contact orders since defendant consented to those orders in his plea agreement; and guilty pleas were validly made; cause is remanded solely for re-sentencing consistent with R.C. 2929.19(B)(2)(c).

Sentencing/Allied offenses. State v. Davis | 2022-Ohio-2797 | 1st Appellate District | 08/12/2022 In a bench conviction of, inter alia, felony murder, R.C. 2903.02(B), and aggravated robbery, R.C. 2911.01(A)(1), imposition of prison sentences on both of those offenses was not plain error since the offenses were not allied offenses of similar import since they were committed with a separate animus because offense of aggravated robbery was completed when defendant pointed a weapon at victim and demanded money, and his act of shooting the victim three times involved an act of force that was well in excess of that needed to commit the robbery, demonstrating an animus to kill separate from the animus to commit robbery, R.C. 2941.25.

Search. State v. Hall | 2022-Ohio-2772 | 8th Appellate District | 08/11/2022 In a conviction by plea to drug trafficking and drug possession, denial of motion to suppress was not error since officer had reasonable, probable cause to make a traffic stop where another officer, who was performing unrelated undercover duty in an unmarked vehicle, informed arresting officer that a vehicle was speeding, providing reasonable suspicion for officer to make a traffic stop, and officer who made the stop was a K-9 handler and noticed a strong smell of raw marijuana coming from inside the vehicle, providing probable cause to search the vehicle; claim on appeal that medical marijuana is legal in Ohio and odor of raw marijuana odor is insufficient for a search was not raised at the trial court.

Joinder/Severance. State v. Perkins | 2022-Ohio-2841 | 7th Appellate District | 08/11/2022 In a conviction by plea to two counts of rape, R.C. 2907.02(A)(2)(B), of defendant's two minor

daughters, denial of motion to sever the trials was error since the testimony of each victim would not have been permissible under Evid.R. 404(B) if there were separate trials, and the offenses against each victim "were too similar and inflammatory to realistically avoid fostering the erroneous belief that the distinct offense corroborated one another," Kaufman and Schaim.

Jury/Disability. State v. Chapman | 2022-Ohio-2853 | 4th Appellate District | 08/11/2022 In a conviction of, inter alia, attempted murder, the trial court did not commit plain error by excluding a prospective juror based on the juror's disability since nothing in R.C. 2313.14(A)(4) requires a trial court to conduct an in-depth, individualized assessment of a prospective juror before dismissing a juror from service due to a mental or physical condition and, moreover, even if an abuse of discretion standard applies to R.C. 2313.14(A)(4), there was no abuse of discretion where the trial judge was aware of the prospective juror's Down's Syndrome disability, and the father of the prospective juror had asked the judge to remove his son because it would not be in his son's best interest to be on the jury.

Intervention in lieu of conviction/Final appealable order. State v. Yontz | 2022-Ohio-2745 | Supreme Court of Ohio | 08/11/2022 Court of appeals dismissal as moot of appeal of the trial court's order denying appellant's motion to modify the terms of his intervention in lieu of conviction supervision requiring appellant to be titrated from the use of Suboxone within a prescribed time period and that appellant had complied with is vacated by the Supreme Court of Ohio since the trial court's denial of the motion does not fall into any of categories of a final appealable order under R.C. 2505.02.

Fair trial. State v. R.W. | 2022-Ohio-2771 | 8th Appellate District | 08/11/2022 In a conviction of, inter alia, two counts of first-degree felony rape of defendant's minor daughter, the trial court did not err by allowing jurors to view defendant in orange jail clothing with his hands shackled for one full day during the trial since defendant refused to change to civilian clothing at the jail after he had appeared in civilian clothing for five prior days of trial, and he also stated in the jury's presence that he was wearing shackles around his feet during that time, where the trial court instructed jurors to disregard the fact that

defendant was shackled and wearing jail clothing, and the jury is presumed to follow the court's instructions and, moreover, jury found defendant not guilty of two counts of rape, indicating that the jurors were able to deliberate objectively and fairly.

New trial. State v. Brown | 2022-Ohio-2752 | 1st Appellate District | 08/10/2022 In a bench conviction of aggravated robbery of one person, the robbery of another person and having a weapon while under a disability, conviction of robbery was not supported by the weight of evidence since the alleged victim merely handed money to the person threatened by the robber and was not threatened by him; however, denial of motion for a new trial on the aggravated robbery conviction is reversed and remanded for a new trial based on a discovery violation for the state's failure to disclose that victim who was robbed used Facebook photos of defendant she discovered to identify him.

Jury trial/Waiver. State v. Osterman | 2022-Ohio-2751 | 1st Appellate District | 08/10/2022 In a bench conviction of two counts of felonious assault, the trial court erroneously conducted a bench trial where purported jury waiver was not made in open court as required by R.C. 2945.05 even if defendant's counsel acknowledged the jury waiver since the trial court never personally addressed defendant about the waiver, nor did the defendant ever orally acknowledge the waiver, Lomax; remanded.

Sealing. State v. McVean | 2022-Ohio-2753 | 1st Appellate District | 08/10/2022 Denial of an application to seal acquittal for an OVI offense and conviction on the accompanying speeding violation was error since, under R.C. 2953.61(B)(1), a person charged with two offenses connected to the same act, but convicted of only one may apply for the sealing of both his records, even when one of the offenses is an otherwise ineligible speeding violation, and the statute further directs that the court shall not order only a portion of the records be sealed, Christen.

Declaratory judgment/Jurisdiction. Richard v. Ohio Parole Bd. | 2022-Ohio-2762 | 5th Appellate District | 08/10/2022 Inmate's pro se declaratory judgment action seeking a declaration that parole board denied inmate meaningful consideration for parole

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and used the Ohio Administrative Code improperly, the court of appeals affirms in part and reverses in part since the trial court correctly held that it cannot grant judgment against the parole board because service of process has not been made because relator attempted service on the board at the correctional facility where he is incarcerated, and the court of appeals takes judicial notice that the parole board is not located in that county; the trial court did err by sua sponte dismissing the complaint on the basis of res judicata since it is not a proper basis for the dismissal of a complaint.

Evidence/Identification. State v. Higgins | 2022-Ohio-2754 | 1st Appellate District | 08/10/2022 Bench conviction of improperly discharging a firearm into a habitation, R.C. 2923.161(A)(1), met the sufficiency and weight of evidence standards where victim testified to seeing a vehicle matching one used by defendant drive by her apartment after initial shots entered through her apartment bedroom window, that she recognized defendant's head and hair as that of the person shooting the gun and police located a spent bullet casing at the approximate location where victim reported seeing the car drive slowly by and seeing the flash of the gunshot.

New trial. State v. McNeal | 2022-Ohio-2703 | Supreme Court of Ohio | 08/09/2022 Following a 2016 conviction of rape of a substantially impaired person, R.C. 2907.02(A)(1)(c), that was affirmed by the court of appeals, denial of 2020 Crim.R. 33(B) motion for leave to file a delayed motion for new trial as untimely filed and affirmed by the court of appeals was error since appellant established a prima facie case that the state suppressed evidence that tended to disprove an element of the rape charge and tended to impeach victim's testimony that her consumption of alcohol substantially impaired her ability to resist or consent to sexual conduct with appellant, and appellant was unavoidably prevented from filing the motion within the time specified in Crim.R. 33(B), Brady and Bethel; remanded to the trial court to grant appellant's motion for leave to move for a new trial.

Plea. State v. Sanchez | 2022-Ohio-2721 | 3rd Appellate District | 08/08/2022 In a conviction by plea to assault, R.C. 2903.13(A)(C)(5)(a), plea was not validly made since the trial court failed to substantially comply with Crim.R. 11(B)(2) because it completely failed to address defendant personally and to inform him of, and determine that he understood, "the effect of the plea of no contest," Crim.R. 11(C)(2)(b) and (B)(2).

Suppression/Miranda. State v. Withrow | 2022-Ohio-2850 | 7th Appellate District | 08/08/2022 In a conviction by plea to aggravated drug possession, denial of motion to suppress was error where, although officer's detection of the smell of marijuana during a traffic stop provided probable cause to search, he informed defendant that he was not under arrest, but officer's questions clearly indicated he intended a full search of defendant, including his pockets, as part of the "patdown," violating Miranda in obtaining the initial statements from defendant, and officer relied on these statements for his probable cause and, since the search of defendant's pockets and a satchel around his neck was done without a warrant, all evidence obtained from the moment the officer asked his first question was inadmissible.

Evidence/Hearsay. State v. Armour | 2022-Ohio-2717 | 3rd Appellate District | 08/08/2022 In convictions in two cases of drug and weapons offenses, admission of officer's testimony that confidential informant provided additional information that the supplier would be at the house the day following the purchase was not inadmissible hearsay since the testimony was admissible to show the next investigative step by police, and any error was harmless where defendant was found in close proximity to the drugs, he acknowledged that the money belonged to him to some degree, and the money contained bills involved in the controlled drug buy.

Evidence. State v. Jewell | 2022-Ohio-2727 | 12th Appellate District | 08/08/2022 In a conviction of three counts of third-degree felony unlawful sexual conduct with a minor, R.C. 2907.04(A), the trial court did not commit plain error by admitting certain testimony from victim's therapist and mental health counselor and from the investigating detective since the witnesses' testimony did not improperly bolster and vouch for victim's credibility

since none of the witnesses' testimony offered an opinion as to the truth and veracity of the victim's sexual abuse allegations, but merely explained why they believed it was normal and consistent for a child victim of sexual abuse to initially deny the sexual abuse had occurred, Stowers.

Search/Affidavit. State v. Hilliard | 2022-Ohio-2849 | 7th Appellate District | 08/08/2022 In a conviction by plea to cocaine possession, denial of motion to suppress was error since the affidavit in support of the search warrant is deficient since it failed to include any form of a timeline of the police investigation of a report from a motel manager that a housekeeper observed evidence of apparent drugs in the room occupied by defendant, nor did officer verify the accuracy of the driver's license information given to him by the motel manager, and the affidavit included incorrect or misleading information due to either carelessness or intentional indifference to the truth that the officer could not have relied on.

Domestic violence. State v. Harter | 2022-Ohio-2714 | 9th Appellate District | 08/08/2022 In a conviction of wife of domestic violence, R.C. 2919.25(A), the trial court did not err by not allowing wife to cross-examine her husband concerning the issue of motive and intent where defense counsel was permitted to cross-examine husband about the cause of the argument with his wife, nor was any underlying cause relevant to either her defense or the state's case against her and, since wife did not claim that she acted in self-defense, neither subjective or objective reasonableness of her actions were issues.

Sexual offenses/Rape/Gross sexual imposition. State v. Chute | 2022-Ohio-2722 | 3rd Appellate District | 08/08/2022 Conviction of rape, R.C. 2907.02(A)(1)(b), (B), and two counts of gross sexual imposition, R.C. 2907.05(A)(4), (C)(2), by grandfather of minor met the sufficiency and weight of evidence standards where officer testified that defendant admitted to taking a bath with his granddaughter, and it is irrelevant where the victim specifically touched defendant since nothing in the statute requires the state to delineate a specific body part, and defendant admitted to officer that he was aroused by the victim's touch and, moreover, he "shaped and groomed" the victim's

concepts of right and wrong touches, Williams.

Sentencing/Presentence report.

State v. Meyer | 2022-Ohio-2746 | 6th Appellate District | 08/05/2022

In a conviction by plea to vehicular assault, R.C. 2903.08(A)(2)(b) and (C)(1) and (2), imposition of prison sentence of 54 months was not error where claim that victim's statements at sentencing contained facts constituting new material facts for purposes of R.C. 2930.14 is without merit since the statements concerning a prior altercation and events after defendant's collision with the victim were supported by the pre-sentence report showing unpleasant interaction between the parties before the collision and that defendant's actions prior to the collision in speeding and hitting the victim were deliberate, not accidental.

DNA testing. State v. Harwell | 2022-Ohio-2706 | 2nd Appellate District | 08/05/2022

Following a 2013 conviction of, inter alia, two counts of murder that was affirmed after re-sentencing, denial of application for post-conviction DNA testing was not outcome determinative, R.C. 2953.74(B)(1), since defendant admitted at trial that at the time of trial DNA testing was generally accepted and available, including touch DNA and STR-DNA years, and also, the issue of identity was not at issue at trial, R.C. 2953.74(C).

Witnesses/Expert testimony. State v. Jordan | 2022-Ohio-2708 | 2nd Appellate District | 08/05/2022

In a conviction of multiple counts of, inter alia, rape by defendant of his two minor daughters, the trial court did not err in the admission of a pediatric psychologist's expert testimony since the testimony did not vouch for the child's allegations of sexual misconduct by defendant or offer an opinion that the child had been abused, but only offered expert's opinion of the wide range of behavioral characteristics displayed by minor victims of sexual abuse, and a psychologist may testify on the characteristics of child abuse victims and may testify that the child in question exhibits those characteristics.

Aggravated murder. State v. Bowman | 2022-Ohio-2705 | 2nd Appellate District | 08/05/2022

Conviction of aggravated murder, R.C. 2903.01(A), met the sufficiency and weight of evidence standards where there was no direct evidence to establish that defendant

murdered his wife, the circumstantial evidence provided sufficient evidence, including testimony of a person who was in the same jail as defendant and testified that defendant admitted to murdering his wife, including details on how it was done and the evidence that he had destroyed supported the conviction, and the jury did not lose its way in making its credibility determinations.

Confrontation Clause. State v. Crawford | 2022-Ohio-2673 | 8th Appellate District | 08/04/2022

In a conviction of two counts of rape and three counts of sexual battery by defendant-father of minor victim, victim's remote live video testimony did not violate defendant's constitutional right to confront witnesses since in light of the COVID-19 emergency and the victim testing positive for the virus, the procedure was justified on a case-specific finding, based on important state interests, public policies, and necessities of the case, and the remote testimony satisfied the other three elements of confrontation: oath, cross-examination, and observation.

Evidence/Hearsay. State v. Adl | 2022-Ohio-2692 | 8th Appellate District | 08/04/2022

In a conviction of, inter alia, murder, R.C. 2903.02(A) and (B), the trial court did not err in admission of witness' statement that defendant was firing a gun in the air as he ran toward a car that was approaching defendant and the witness since it was not hearsay where it was offered to explain defendant's reaction; also discussed, Batson challenge.

Sentencing/Community control.

State v. Thomas | 2022-Ohio-2682 | 8th Appellate District | 08/04/2022

In a conviction by plea to robbery and attempted felonious assault, imposition of drug testing as a condition of community-control sanction was not error where the condition is reasonably related to rehabilitating defendant since the pre-sentence investigation report revealed that defendant had been convicted of several drug-related offenses, the condition has some relationship to the crime that defendant was convicted of since victim stated that defendant and his co-defendants had tried to sell him drugs, and the condition relates to criminal conduct and is reasonably related to future criminality, Robinson.

Self-defense. State v. Williams | 2022-Ohio-2674 | 8th Appellate District | 08/04/2022

In a conviction of two counts of felonious assault arising out of a shooting, the trial court's finding that the state negated defendant's claim of self-defense was not error since the weight of evidence shows that defendant was at fault in creating the situation where he arrived at his former girlfriend's mother's house, he escalated the situation by retrieving his gun from his truck, fired shots while outside the house, approached the front door and fired again into the house wounding the victim.

Confrontation Clause. State v. Staken | 2022-Ohio-2680 | 8th Appellate District | 08/04/2022

In a bench conviction of, inter alia, aggravated robbery, defendant's constitutional right to confront witnesses was not violated by victim's remote live video during the trial since victim was not testifying that it was the defendant who assaulted and robbed her because she had admitted that she was unable to do so and her husband did not witness the attack and, in light of the COVID-19 emergency, the inconvenience it would cause the witnesses and their three young children who resided in another state, defendant retained full opportunity for contemporaneous cross-examination, and the judge, jury and defendant would be able to view by video monitor the demeanor of the witnesses as the victim and her husband testified.

Animal cruelty. State v. Roberson | 2022-Ohio-2696 | 5th Appellate District | 08/03/2022

Conviction by plea to cruelty to animals, R.C. 959.13(A)(4), met the sufficiency and weight of evidence standards where there was testimony that defendant kept her dog in a metal enclosure without exercise and change of air, enclosure was too small for the dog and that it was covered and sealed with a tarp on a hot and humid day, did not allow the dog to get free flowing air or wholesome exercise, defendant's neighbors testified that the dog was rarely left out of the cage which was regularly covered by a tarp, and a humane society kennel manager testified that defendant told her that the dog had been kept in those conditions for at least 12 hours.

Criminal (Continued)

Right to counsel/Miranda. State v. Madden | 2022-Ohio-2638 | 1st Appellate District | 08/03/2022 In state's appeal of grant of motion to suppress in an aggravated robbery prosecution, the trial court did not err in granting defendant's motion to suppress his statements to officers after he had received his Miranda warnings where defendant did not voluntarily waive his right to counsel since he invoked his right three times after officers said they would like to talk with him and they reinitiated the interrogation under the guise of a generalized discussion about the investigation.

Aiding and Abetting. State v. Lee | 2022-Ohio-2656 | 5th Appellate District | 08/03/2022 Conviction of aiding and abetting aggravated robbery, R.C. 2911.01(A)(1) and (C), and receiving stolen property, R.C. 2913.51(A), was not supported by sufficient evidence where no evidence was presented that would implicate defendant in the commission of the offenses that another person was convicted of beyond his presence in the vicinity of the car that was owned by the person convicted of the robbery, and that a man with a similar first name of defendant may have been with the robber at the time of the aggravated robbery since there was no evidence to show any actions by defendant that aided or abetted the principal in the commission of the crime, or that he received, retained or disposed of any of the stolen property, Langford.

Sentencing/Judgment entry. State v. Hodge | 2022-Ohio-2748 | 4th Appellate District | 08/03/2022 Conviction in two cases of, inter alia, two counts of failure to appear was error since the state and defendant reached a plea agreement that included dismissing one of the failure to appear offenses, but the judgment of conviction entry included a 17-month prison term for each count of failure to appear, and the trial court also failed at the sentencing hearing to specify the count it was sentencing defendant to; also discussed, jail-time credit and restitution.

Disability

Medicaid application/Trust/Certified record. Herubin v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-3243 | 7th Appellate District | 09/14/2022 In plaintiff-executor's appeal of denial of decedent's application for Medicaid

benefits, trial court's judgment is affirmed since decedent failed to execute a qualified income trust as required by the application, decedent's son failed to assert the argument either in a letter or at the hearing prior to the denial decision that the pandemic made it impossible to establish the required trust, and the reviewing court is precluded from considering the son's subsequent affidavit, which was properly struck by the trial court, since the affidavit was outside the certified administrative record.

Medicaid eligibility/Reasonable efforts. Gardner v. Ohio Dept. of Job & Family Servs. | 2022-Ohio-3021 | 1st Appellate District | 08/31/2022 In plaintiff-care center resident's application for long-term Medicaid benefits, trial court erred in finding that the reasonable-efforts exclusion did not apply since plaintiff's real property should be excluded as a resource under 42 U.S.C. 1382b(b)(1) because plaintiff was making reasonable efforts to sell it, and plaintiff was not required to furnish an agreement to sell the property within a certain time period because, although the state must provide a reasonable-efforts exclusion, it is not required to adopt 20 C.F.R. 416.1240-1245, relating to an agreement to sell.

Education

Disability discrimination/Admission to school. Datto v. Ohio State Univ. | 2022-Ohio-3650 | Court of Claims | 09/20/2022 In applicant's disability discrimination action against university, asserting that it failed to accommodate him under the Americans with Disabilities Act (ADA) by denying his application to medical school, summary judgment for university is granted since applicant was not denied admission because of his disability where applicant was not qualified for admission because of his previous matriculation at another medical school, applicant's accommodations requests did not concern issues such as having extra time to take exams, but rather related to advancing his application to the interview stage and ultimately granting him admission, and the ADA does not require a university to change admissions standards to accommodate disability.

Annexation/Tax revenue/Agreement. Beachwood City School Dist. Bd. of Edn. v. Warrensville Hts. City School Dist. Bd. of Edn. | 2022-Ohio-3071 | Supreme Court of Ohio | 09/06/2022 After territory included in defendant-school district was annexed by city in which plaintiff-school district is situated and the districts agreed to share tax revenue in lieu of a transfer of the territory from defendant to plaintiff, in plaintiff's breach of contract and related claims action against defendant, asserting that defendant did not share the revenue, the court of appeals did not err in ruling that the agreement was enforceable since the agreement was unanimously adopted by both school districts, did not require approval from the state board of education pursuant to R.C. 3311.06 because no territory was transferred, and did not require a fiscal certificate under either former R.C. 5705.41 or former R.C. 5705.412 because the agreement did not involve an expenditure of money.

Grievance/Appeal/Representation. Kolkowski v. Ashtabula Area Teachers Assn. | 2022-Ohio-3112 | 11th Appellate District | 09/06/2022 In school counselor's action against teachers association, arising from a grievance she asserted, claiming constitutional and statutory violations and seeking a declaration that she had the right to retain her own attorney at arbitration, trial court did not err in granting association's motion to dismiss where, although R.C. 4117.03(A)(5) provides for adjustments to grievances that are consistent with terms of parties' collective bargaining agreement, the terms of the agreement state that the counselor must be represented by the association at the current level of arbitration, and the counselor did not have the right to advance the grievance to arbitration without the association's representation.

Compensation/Extra class/Collective bargaining agreement. Career & Technical Assn. v. Auburn Vocational School Dist. Bd. of Edn. | 2022-Ohio-2737 | 11th Appellate District | 08/08/2022 In plaintiff-teachers association's action alleging breach of collective bargaining agreement and seeking back pay for teachers who taught an extra class period, the trial court did not err in denying defendant-school board's motion to dismiss for lack of subject matter jurisdiction where the complaint did not implicate an unfair labor practice pursuant to R.C. 4117.11(A)

and therefore the state employment relations board did not have exclusive jurisdiction; trial court's award of back pay is affirmed since defendant's implementation of early planning period for all teachers did not alter parties' collective bargaining agreement allowing a stipend for an extra class.

Elections and Campaign Finance

Election observers/Constitutionality/Equal Protection. State ex rel. Maras v. LaRose | 2022-Ohio-3852 | Supreme Court of Ohio | 10/28/2022 Independent candidate's petition for a writ of mandamus to compel the Secretary of State to allow her to appoint election observers to inspect equipment and supervise ballot counting and to make available the source codes and related software or to order poll workers to hand-tally the votes is denied since the "five candidate rule" in R.C. 3505.21 is not a violation of Equal Protection where it does not treat independent candidates differently from party-affiliated candidates because any group of five or more candidates—regardless of party affiliation—may appoint observers, a candidate need only be part of a group of five local and/or statewide candidates, and the statute is rationally related to the goal of minimizing disruptions that could occur if too many observers descended on a single polling location; also, the candidate does not identify any clear statutory right to relief relating to providing source codes and related software or requiring votes to be tallied by hand.

Candidate withdrawal/Party-selected candidate. McKittrick v. LaRose | 2022-Ohio-3800 | 10th Appellate District | 10/25/2022 Denial of qualified electors' motion for a temporary restraining order and preliminary injunction to enjoin the placement of party-selected judge's name on general election ballot for a seat on the court of appeals is vacated since the trial court should have dismissed the motion where the Secretary of State decided in favor of certifying the candidacy of the judge to fill the vacancy created by withdrawal of other judge's candidacy, pursuant to R.C. 3501.11(X), breaking a board of elections tie, and the Secretary's decision is final and not subject to judicial review, except in an action seeking an extraordinary writ, so the trial court lacked subject-matter jurisdiction over electors' motion.

Cool v. Frenchko. Candidate residence challenge/Standing | 2022-Ohio-3747 | 10th Appellate District | 10/20/2022 In citizen's action against candidate for county commissioner and governmental parties seeking a declaration that candidate was ineligible to run for, and is ineligible to serve as, a commissioner of the county because she lives in a different county, the trial court did not err in granting candidate's Civ.R. 12(C) motion for judgment on the pleadings and Civ.R. 12(B)(6) motion to dismiss since citizen lacked standing where he failed to show that he suffered direct injury as result of the election, citizen's status as a county elector did not confer statutory standing under R.C. 2721.03 and 3501.11, and none of the allegations involve any controversy with any governmental party.

Replacement candidate/Placement on ballot. State ex rel. Conrath v. LaRose | 2022-Ohio-3594 | Supreme Court of Ohio | 10/11/2022 Petitioner-candidate's petition for a writ of mandamus to compel respondent-Secretary of State to place petitioner's name on the ballot for upcoming general election is granted where the candidate who had received most votes in petitioner's political party's primary election withdrew as a candidate, then prior to candidate's certification as the primary winner, the party district committee selected petitioner to be the party's replacement nominee under R.C. 3513.31(B), and respondent's refusal to certify petitioner to the ballot was based on the erroneous reasoning that the district committee lacked authority to select a replacement nominee; a major-political party committee is permitted to select a nominee any time before the deadline for certifying the nominee and even in anticipation of a vacancy that ultimately occurs.

Recall election. State ex rel. King v. Cuyahoga Cty. Bd. of Elections | 2022-Ohio-3613 | Supreme Court of Ohio | 10/11/2022 Mayor's petition for a writ of mandamus to compel board of elections to remove recall election from ballot in upcoming general election is denied since the board of elections does not have authority to decertify the recall petition because the city charter places the duty to certify the validity of the petition for a recall election on the city clerk, and once the clerk provides her certification, the board of elections is required to order and fix a day for holding a recall election; also, citizen's

motion to intervene is denied since, inter alia, the citizen does not explain why he has an interest in the status of mayor's recall petition or have a legal argument relevant to whether the recall election should appear on the ballot, Civ.R. 24.

Charter amendment petition. State ex rel. Sanduskians for Sandusky v. Sandusky | 2022-Ohio-3362 | Supreme Court of Ohio | 09/23/2022 In mandamus action by relators-citizens group to compel respondents-city commission members to certify a charter-amendment petition for a vote by city's electors at upcoming general election, a limited writ of mandamus is granted to compel respondents to pass an ordinance to submit the proposed charter amendment to an election, under Ohio Const. Art. XVIII, Sec. 8 and the city charter, on the condition that the board of elections certifies that the charter-amendment petition has enough valid signatures, where respondents erred in reasoning that the petition was invalid because it did not contain the full text of the proposed amendment, required by R.C. 731.31, since the city charter does not contain a full-text requirement for the charter-amendment process; relators' request to compel the city respondents and the board of elections to place the proposed charter amendment on the upcoming election ballot is denied because relators have no right under the Ohio Constitution or the city charter to have the proposed amendment placed on the upcoming general-election ballot, but if the petition has enough valid signatures, relators are instead entitled to an order compelling the city commissioners to call a special election within the time parameters stated in the city charter and Ohio Const. Art. XVIII, Sec. 8.

Independent candidate/Disaffiliation from political party. State ex rel. Ungaro v. Mahoning Cty. Bd. of Elections | 2022-Ohio-3318 | Supreme Court of Ohio | 09/22/2022 Candidate's petition for a writ of mandamus to compel county board of elections to place his name on upcoming general-election ballot as an independent candidate is granted since the board abused its discretion in rejecting candidate's nominating petition for his failure to make a good faith attempt to disassociate himself from a political party where the board based its decision on candidate's campaign website containing four year-old photographs depicting signs and

Elections and Campaign Finance (Continued)

shirts bearing political party's branding, and the board's decision was the result of only one member's viewing of the website, without permitting the parties to be heard or to present any evidence, R.C. 3501.01(l) and 3513.257; also, while the candidate has the burden to prove an abuse of discretion in rejection of a petition, in determining whether a candidate made a good faith attempt to disassociate from a political party, the burden is on those opposing the candidacy to establish that the candidate claimed disaffiliation in bad faith.

Certification forms/Deadline. State ex rel. Maras v. LaRose | 2022-Ohio-3295 | Supreme Court of Ohio | 09/20/2022 Candidate's petition for a writ of mandamus to compel the Secretary of State to certify her name to upcoming election ballot as an independent candidate is granted where the Secretary had issued a Directive stating that the boards of elections should submit their certification forms to his office by a certain date, earlier than the date specified in R.C. 3513.262, and the Secretary's rejection of two county boards' amended certification forms, containing nine additional names for candidate, submitted after the Directive date but before the date specified in R.C. 3513.262 violated that statute, so the names are ordered to be added to candidate's total, resulting in the order to certify candidate to the ballot.

Judicial office/General election/ Primary election result. State ex rel. Trumbull Cty. Republican Cent. Comm. v. Trumbull Cty. Bd. of Elections | 2022-Ohio-3268 | Supreme Court of Ohio | 09/16/2022 Petition for a writ of mandamus to compel the board of elections to place candidate's name on upcoming general-election ballot for common pleas judge is denied where candidate was selected by her party's central committee to run in the general election for the unexpired term of the judicial office vacated by common pleas judge who retired; however, candidate had run unsuccessfully for judge of the court of appeals in preceding primary election, R.C. 3513.04 prohibits a candidate from running for an office in the general election if the candidate unsuccessfully ran for office in the preceding primary election, and relators have not shown that R.C.

3513.04 is unconstitutional as applied to candidate's candidacy.

Referendum/Emergency ordinance. State ex rel. Halstead v. Jackson | 2022-Ohio-3205 | Supreme Court of Ohio | 09/13/2022 Relators' petition for a writ of mandamus to compel city finance director and other respondents to transmit relators' referendum petition on a zoning ordinance to the board of elections is denied since, under the city's charter, a zoning ordinance validly passed as emergency legislation is not subject to referendum, and the ordinance in this case was properly enacted as emergency legislation where the emergency declaration in this case refers to clear interests of the municipality: increasing income-tax revenue and protecting infrastructure investments, R.C. 731.30; also, the defense of laches based on delay in filing the action did not apply in the absence of harm to the city or intervening-respondent developer.

Village powers surrender petition/ Certification to ballot. State ex rel. Moscow v. Clermont Cty. Bd. of Elections | 2022-Ohio-3138 | Supreme Court of Ohio | 09/08/2022 Protestors' petition for a writ of prohibition is granted to reverse board of elections' certification to ballot of petition to surrender corporate powers of village since R.C. 703.20 requires submission of a surrender petition to a village legislature as condition precedent to its placement on a ballot, and the instant surrender petition was not filed with the legislative authority of the village prior to its submission to the board, with this court holding that the Pringle decision, on which the board of elections relied, was wrongly decided; protestors' petition for a writ of mandamus to compel board to remove the surrender petition from the ballot is denied as moot since the writ of prohibition has been granted.

Referendum petition/Resolution. State ex rel. Clark v. Twinsburg | 2022-Ohio-3089 | Supreme Court of Ohio | 09/02/2022 In petition for a writ of mandamus to compel respondent-city clerk of council to transmit a referendum petition and a certified copy of a resolution to the county board of elections, a limited writ is granted where respondents had refused to transmit the petition to the board on reasoning that the measure in question was an administrative act and therefore not subject to referendum, but respondent

has a clear legal duty to transmit the petition to the board for an examination of the signatures, R.C. 731.29; the court does not address the issue of whether the resolution is subject to referendum.

Nominating petition/Independent candidates. State ex rel. Cunnane v. LaRose | 2022-Ohio-2875 | Supreme Court of Ohio | 08/18/2022 Candidates' petition for a writ of mandamus to compel the Secretary of State to certify their names to the ballot in upcoming election is denied since the candidates filed declarations that they were independent from any political party and then, five days later, cast ballots in one political party's primary election, casting a partisan-primary ballot is a quintessential act of party affiliation, and the candidates have not met their burden to prove that the Secretary abused his discretion when he declined to certify them as independent candidates.

Primary election/Challenge to electors. State ex rel. Ames v. LaRose | 2022-Ohio-2794 | Supreme Court of Ohio | 08/11/2022 Recent primary election candidate's petition for a writ of mandamus to compel respondent-Secretary of State to direct respondents-county boards of elections to challenge electors who requested a ballot for a party other than the one for which the elector voted in the previous primary election and for an order that ballots cast in the recent primary be segregated according to the party for which the elector voted in previous primary and that any ballots cast for a different party not be counted is denied on the basis of mootness since the challenged election is over and the Secretary can no longer perform the requested act; also, petitioner has not shown a clear legal right to the relief requested from the boards or a clear legal duty to provide the relief, particularly since the requested relief is contrary to Directive 2022-34, which instructed boards to allow electors to request any party's ballot for the recent primary.

Environmental and Natural Resources

Mineral interests/Parties to leases. Marquette Orri Holdings, L.L.C. v. Ascent Resources-Utica, L.L.C. | 2022-Ohio-3786 | 7th Appellate District | 10/19/2022 In plaintiffs-gas companies' action against defendants-new lessees of oil and gas rights alleging, inter alia, breach of contract for failure to pay

overriding royalty interests on oil and gas production, summary judgment for defendants was not error where, although the terms of the original leases provided that the overriding royalty interests assigned in the leases shall apply to new leases, defendants were not parties to the original leases or the overriding royalty interest assignments, and the overriding royalty interests could not be extended or renewed once the original leases expired since defendants were not parties to the original leases and there was no privity of contract.

Mineral interests/Lease/Paying quantities. Hogue v. Whitacre | 2022-Ohio-3616 | 7th Appellate District | 09/30/2022 In lessors-plaintiffs' action for a declaratory judgment that well had stopped producing oil or gas in paying quantities under terms of lease, the trial court erroneously deemed the lease expired on reasoning that there was a lack of paying quantities since any "paying quantities" analysis involves a mathematical equation that begins with gross income and subtracts only direct expenses, consisting of landowner royalties, gas and oil severance taxes, and most maintenance expenses, to arrive at profit, and using this analysis the well did produce in paying quantities during the relevant years, Blausey.

Violations/Consent order/Contempt. State ex rel. Yost, Atty. Gen. v. Anthony | 2022-Ohio-3188 | 4th Appellate District | 09/07/2022 In state's action seeking injunctive relief and civil penalties for environmental violations committed by defendant and related entities, resulting in a consent order, trial court did not err in finding defendant in contempt for failing to abide by the consent order by making only one payment on the civil penalty, defendant's motion for a continuance of the contempt hearing was appropriately denied because he had sufficient notice of the hearing date and adequate time to retain counsel, and purge conditions were not unreasonable and did not regulate future conduct by setting payment schedule.

Estate Planning, Trust and Probate

Trust/Breach of duty. In re Trust of Tary v. Seiple | 2022-Ohio-3773 | 6th Appellate District | 10/21/2022 In sister's action seeking to compel trustee to provide documents and accounting of mother's trust, trial court did not err

in granting sister's motion to remove trustee where trustee's conduct constituted a serious breach of trust under R.C. 5807.06(B)(1) because she breached her duty to her sister as residual beneficiary for her own benefit, and even if trustee's delay in providing accounting to sister pursuant to R.C. 5808.13(A) was reasonable, it masked the serious breach of trust regarding transfer of properties.

Concealment/Attorney fees. Pirock v. Crain | 2022-Ohio-3612 | 11th Appellate District | 10/11/2022 In plaintiffs-surviving children's action against defendants-brothers for concealing cash and coins that were part of parents' estates, resulting in a jury verdict against one defendant, trial court erred in finding that the American rule barred plaintiffs' request for attorney fees where, although R.C. 2113.36 did not apply because plaintiffs' attorney was not employed by the executor or administrator of the estate, defendant was found to have concealed estate assets, and the trial court erred in failing to consider if the "bad faith" exception to the American rule applied, so the case is remanded to the trial court to make that determination.

Mentally ill person. In re J.L.S. | 2022-Ohio-3539 | 10th Appellate District | 10/04/2022 Judgment declaring appellant a mentally ill person subject to court-ordered hospitalization is affirmed since physician provided testimony that appellant suffered from mental illness which substantially disturbed his mood and resulted in gross impairment of judgment, and there was evidence that appellant threatened others with violence and presented a substantial risk of physical harm to others, pursuant to R.C. 5122.01(B)(2).

Party/Corporate entity/Discovery/Counsel. Hogg v. Grace Community Church | 2022-Ohio-3516 | 12th Appellate District | 10/03/2022 In plaintiffs-heirs' action against defendants-church beneficiary and decedent's investment manager company asking the court to declare that decedent's investment accounts were assets of his estate and to issue an injunction to prohibit manager from transferring funds from decedent's accounts during the pendency of the action, trial court did not err in compelling investment manager to respond to plaintiffs' discovery requests and to retain counsel since manager was a party to the action, even though

it did not appear or defend itself and default judgment was issued against it, manager was not exempt from discovery that the trial court deemed appropriate pursuant to Civ.R. 26, and manager, as a corporate entity, was required to appear only through counsel.

Guardianship/Marriage request. In re Guardianship of Kindell | 2022-Ohio-3456 | 2nd Appellate District | 09/30/2022 Denial of ward's request to get married on reasoning that she lacked the mental capacity to enter into a marital contract is affirmed where there is evidence, inter alia, that the ward needs guidance to carry out daily life skills and that she could not conduct business affairs or properly care for herself without the aid of a guardian, and evaluations by psychologists described ward's poor decision-making; however, ward will have an opportunity, through her future actions, to show that she truly understands the nature of the marriage contract and is capable of consenting to taking on the mutual obligations inherent in a marriage contact.

Trustee/Transfers/Presumption. Daddario v. Rose | 2022-Ohio-3537 | 5th Appellate District | 09/30/2022 In heirs' and administrator's action against trustee-sister alleging, inter alia, unjust enrichment for improper distribution of trust assets, the trial court erred in applying an incorrect test when considering whether transfers to trustee were inter vivos gifts since trustee and decedent-mother shared a fiduciary relationship, so there was a presumption of undue influence as to the assets trustee alleged were conveyed to her as gifts, and trustee was required to rebut the presumption by a preponderance of evidence rather than by clear and convincing evidence.

Fiduciary duty/Settlement/Jurisdiction. Jacobson v. Gross | 2022-Ohio-3427 | 8th Appellate District | 09/29/2022 In heirs' action in probate court alleging breach of fiduciary duty by mother, as an individual and as trustee, for enabling embezzlement of trust assets, resulting in a settlement agreement, where one child challenged the agreement in the general division of common pleas court, the probate court did not err in granting heirs' motion to enforce the agreement since it had plenary power to enforce the agreement because the complaint was properly before the court and the agreement flowed from the complaint,

Estate Planning, Trust and Probate (Continued)

the probate court did not lose jurisdiction when mother was dismissed as an individual because the remaining parties and claims were left intact, and the probate court's jurisdiction was first invoked so it had jurisdiction under the jurisdiction-priority rule.

Concealment/Appeal. In re Estate of Notarian | 2022-Ohio-2927 | 11th Appellate District | 08/22/2022 In executrix's concealment action against trustees of family trust, resulting in a judgment requiring trustees to return four parcels of property to the probate estate, trustees' appeal of the transfer back order is dismissed for lack of a final appealable order since, while the concealment action is a special proceeding for purposes of R.C. 2505.02(B)(2), the judgment on appeal did not affect a substantial right and therefore may be appealed only after the trial court determines whether restitution is owed, R.C. 2109.50.

Family Law and Domestic Relations

Shared parenting. Hughey v. Hughey | 2022-Ohio-3791 | 4th Appellate District | 10/19/2022 In divorce action in which both parties requested shared parenting, where wife's shared parenting plan was considered and rejected by the trial court, the court erred by designating husband as residential parent without first considering his proposed shared parenting plan pursuant to R.C. 3109.04(D), and husband conceded that his proposed plan should be reviewed and considered prior to final judgment.

Separation agreement/Fraud/Relief from judgment. Wiseman v. Wiseman | 2022-Ohio-3689 | 12th Appellate District | 10/17/2022 In dissolution of marriage action in which husband and wife entered into a separation agreement that trial court specifically incorporated into its decree, the court did not err in subsequently denying husband's Civ.R. 60(B) motion for relief from judgment, arguing that wife had engaged in fraud by failing to disclose her pension, where wife testified about specific instances showing that husband knew about the pension, and even though it was not listed on her property affidavit or property lists, there was no evidence that wife engaged in fraud or wrongful misrepresentation, and the trial court conducted proper independent review

while relying on magistrate's credibility determination.

Child support/Worksheet/Review. Woodford v. Woodford | 2022-Ohio-3656 | 10th Appellate District | 10/13/2022 In divorce action in which husband challenged the amount of his child support obligation, trial court erred in not including the child support worksheet in the record where, although husband received a copy of the worksheet and there were no substantive errors in the calculation of support, the court's decision refers to, and purports to incorporate, the worksheet, which was not attached, and there is insufficient detail to review issues relating to the court's downward deviation in support, R.C. 3113.215.

Visitation agreement/Grandmother. Hibben v. McGuire | 2022-Ohio-3598 | 9th Appellate District | 10/11/2022 In divorce action in which mother was found in contempt for violating grandmother's visitation time under terms of visitation agreement between mother and grandmother, trial court did not err in denying mother's motion to terminate grandmother's visitation where, although special weight is given to parents' wishes pursuant to R.C. 3109.051(D)(15), mother did not act in good faith with regard to her agreement with grandmother since mother sabotaged or cancelled visits and failed to foster a relationship between children and grandmother.

Spousal support. Quinn v. Quinn | 2022-Ohio-3643 | 5th Appellate District | 10/11/2022 In divorce action in which wife challenged her spousal support obligation, trial court did not err in its calculation of support where husband transferred his share of family business to wife as part of settlement agreement, and therefore wife's income would include distributions attributable to husband's former interest in company as well as her own distributions, and the relevant factors listed in R.C. 3105.18 were reviewed in determining a reasonable and appropriate amount of support.

Relief from judgment/Jurisdiction. Archer v. Vallette | 2022-Ohio-3560 | 10th Appellate District | 10/06/2022 In divorce action in which husband sought modification of spousal support order, the trial court erred in sua sponte granting husband relief from the entire judgment, except for the divorce itself, on reasoning that wife

did not fully disclose marital assets and debts, since the court did not retain jurisdiction under the terms of the decree to modify spousal support, R.C. 3105.18(E), Civ.R. 60(B) does not permit the court to exercise jurisdiction without a reservation of jurisdiction, and the divorce decree was not void, but only voidable, due to wife's inadequate disclosure.

Spousal support/Relief from judgment. Pond v. Pond | 2022-Ohio-3561 | 10th Appellate District | 10/06/2022 In divorce action, denial of ill physician-husband's Civ.R. 60(B) motion for relief from judgment, arguing that he was pressured into agreeing to a level of imputed income, was not error where husband did not become disabled until after termination of the parties' marriage, so his disability could not affect the trial court's imputed income calculation, he failed to provide evidence that wife made false statements concerning his ability to work, and wife's alleged fraud did not prevent husband from explaining to the court the true nature of his disabilities.

Family-Property division/Date of valuation. Karabogias v. Zoltanski | 2022-Ohio-3548 | 8th Appellate District | 10/06/2022 In divorce action in which wife challenged the date used for pension distribution, trial court did not err in its determination of the date of valuation when adopting a qualified domestic relations order regarding the pension where the judgment entry of divorce clearly stated that the date of divorce would not be used for valuing marital property because valuation information was not provided for that date, and the trial court adequately explained its reasons for using an alternative valuation date to achieve equity, R.C. 3105.171.

COVID-19 stimulus payments. McCormick v. McCormick | 2022-Ohio-3543 | 9th Appellate District | 10/05/2022 In divorce action in which wife sought to recover from husband the amount of money he received in COVID-19 stimulus payments for the minor children and to order future stimulus payments to be paid to her as the residential parent, the trial court erred in presuming that the parties' children were "qualifying children of the taxpayer" with respect to husband under provisions of 26 U.S.C. 152(e), that question is not considered in the first instance on appeal, and wife's

assignment of error is sustained solely on that basis.

Parenting agreement/Contempt.

Ricksecker v. Ricksecker | 2022-Ohio-3564 | 5th Appellate District | 10/04/2022 In divorce action in which wife filed motions for contempt against husband for various failures under parenting agreement, trial court did not err in finding husband in contempt where, as required under terms of the parties' agreement, husband failed to provide wife with an itinerary for summer vacation, he failed to provide wife weekly telephone calls with children, and he failed to return children to wife as scheduled.

Property division/Valuation date/

Financial help. Owens v. Owens | 2022-Ohio-3450 | 1st Appellate District | 09/30/2022 In divorce action property division dispute, it was error to value the marital home on a date beyond the court-established date of marriage termination when there was a valuation much closer to the termination date that better represented the value of the home, and it was also error to decline to award husband his remaining premarital shares of stock, which were his separate property; also, the court erred in awarding attorney fees to wife without weighing the various financial situations of the parties, taking into consideration husband's history of getting financial help from his mother "without the need for repayment."

Contempt/Interest/Attorney fees.

Lelak v. Lelak | 2022-Ohio-3458 | 2nd Appellate District | 09/30/2022 In divorce action in which husband was found in contempt for violating a court order by failing to pay wife certain retirement benefits, the trial court did not err in awarding wife simple interest rather than compound interest since husband was not a fiduciary, and no statutory basis existed on which to award compound interest, but the court did err in imposing the rate of interest where the court should have used the 10 percent statutory rate under R.C. 1343.03 until the statute was amended to provide for a variable rate, which should then have been applied; also, the case is remanded for the trial court to award wife attorney fees, expert fees and court costs.

Child support/Modification/Change of circumstances. Hock v. Soles | 2022-Ohio-3531 | 7th Appellate District | 09/30/2022 In divorce action in which husband challenged modification of his child support obligation, the trial court did not err in finding that there was a change in circumstances sufficient to justify the modification where the fact that the existing support order was the result of the parties' agreement to deviate from the worksheet figure did not preclude mother from seeking modification and for the R.C. 3119.79(A) change of circumstances provision to apply; if the amount of child support calculated with the applicable worksheet is 10 percent greater than the existing support order, there is a change in circumstances substantial enough to require modification.

Custody/Guardian ad litem. Witherow v. Witherow | 2022-Ohio-3618 | 7th Appellate District | 09/28/2022 In divorce action in which wife sought termination of shared parenting plan, the trial court erred in denying wife's motion to remove guardian ad litem and to strike guardian's report and recommendations where there was evidence that the guardian failed to conduct a complete investigation and used old school records, even though he knew wife was concerned about children's school performance, that he failed to disclose that the children's wishes differed from his own recommendation, that he did not obtain a police report relevant to an incident in which child was injured in husband's care, Sup.R. 48.03(A)(9), and that he violated the duty of confidentiality.

Spousal support/Prenuptial agreement. Folberth v. Folberth | 2022-Ohio-3384 | 12th Appellate District | 09/26/2022 In divorce action in which husband challenged the amount of his spousal support obligation, trial court did not err in considering income produced by husband's separate property for purposes of spousal support where the parties retained separate property under prenuptial agreement, but that agreement contained no provision specifically excluding consideration of income from husband's separate property in calculating spousal support, and relevant R.C. 3105.18(C) factors were considered in determining amount and duration of support award.

Family-Custody/Changed

circumstance. Cook v. Kramer | 2022-Ohio-3422 | 7th Appellate District | 09/20/2022 In divorce action in which husband sought reallocation of parental rights, trial court erred in designating husband as the residential parent where, although wife withheld parenting time on one occasion when child was returned to her care with injuries, wife did not file any kind of abuse complaint against husband and was not involved in escalation of investigation of child's injuries, and the one incident did not constitute a changed circumstance warranting change in parental rights.

Civil protection order. J.B. v. O.S.Y. | 2022-Ohio-3226 | 8th Appellate District | 09/15/2022 Issuance of a civil stalking protection order (CSPO) against respondent, arising from his statements while participating in protests of business in which petitioner was an employee was error since evidence of harsh words uttered by respondent reflected only one instance of threatening language and did not establish a pattern of conduct that respondent knowingly caused petitioner to believe that respondent would cause her physical harm or cause petitioner mental distress, R.C. 2903.211, 2903.214; also, the trial court did not issue the CSPO against the respondent because he exercised his First Amendment right to protest.

Settlement agreement/Appeal/Review of arguments. J.B. v. E.B. | 2022-Ohio-3229 | 8th Appellate District | 09/15/2022 In divorce action in which a settlement agreement was read into the record and agreed to at trial by both parties, the court's enforcement of agreement against the plaintiff is affirmed, even though the plaintiff now claims that the court should have held a hearing and that she did not read the agreement, since the plaintiff failed to cite to the record in support of her arguments, and the record demonstrates that she agreed to all the terms of the agreement at the hearing, so the reviewing court declines to review her arguments.

Custody. Neckles v. Ruthrauff | 2022-Ohio-3308 | 4th Appellate District | 09/14/2022 In divorce action in which both parties sought sole custody of child, trial court did not err in designating wife as custodian of child where mediation agreement did not prohibit wife from traveling with child, husband did not seek contact with child

outside of his allowed parenting time, he chose to accept employment away from child, in communications between parties, wife was polite and courteous while husband was derogatory and insulting, and factors under R.C. 3109.04 were considered in determining child's best interest.

Civil protection order. Lee v. Ash | 2022-Ohio-3288 | 7th Appellate District | 09/13/2022 Issuance of a civil stalking protection order against defendant was not error since defendant's actions resulted in plaintiff's belief that she would be physically harmed and caused plaintiff mental distress where, inter alia, there was evidence that defendant asked his daughter to tell plaintiff he would kill plaintiff if defendant saw her again and that on one occasion defendant's son, who is plaintiff's fiancé, noticed blood on plaintiff's face after she left defendant's home, leading to an argument between defendant and son, resulting in defendant firing a gun at his son, R.C. 2903.21.

Child/Spousal support. Freeman v. Freeman | 2022-Ohio-3222 | 5th Appellate District | 09/13/2022 In dissolution of marriage action in which husband sought review of his child support obligation, trial court did not err in enforcing the terms of the parties' separation agreement that provided for an increase in husband's spousal support obligation to match any decrease in his child support obligation where the agreement did not give the trial court continuing jurisdiction over spousal support; also, husband's argument that the trial court failed to consider the increased health care premiums and childcare expenses he pays out is meritless since he did not raise this issue in his objections in the trial court and therefore waived the issue on appeal.

Contempt/Sanctions. Davis v. Davis | 2022-Ohio-3179 | 12th Appellate District | 09/12/2022 In divorce action in which husband was found in contempt for failure to pay spousal support, trial court did not err in imposing sanctions where wife had previously filed a motion for contempt, trial courts are not bound by the sanction limits of R.C. 2705.05 when imposing a penalty for contempt, and under the totality of circumstances, the sanctions were not otherwise

unconscionable, unreasonable or arbitrary.

Divorce decree/Evidence. Allen v. Allen | 2022-Ohio-3198 | 11th Appellate District | 09/12/2022 In divorce action in which husband sought changes to divorce decree, trial court did not err in excluding evidence of wife's alleged misconduct prior to divorce where husband's proffered evidence was presented to prove wife's character and was not admissible as "other-acts" evidence pursuant to Evid.R. 404(B), husband's testimony constituted extrinsic evidence of wife's alleged conduct and was not permissible pursuant to Evid.R. 608(B), and magistrate reasonably limited presentation of evidence to specific issues raised in husband's motion pursuant to Evid.R. 611(A).

Adoption/Consent. In re Adoption of H.L.W.B. | 2022-Ohio-3161 | 2nd Appellate District | 09/09/2022 In adoptive parents' petition for adoption of child, trial court did not err in finding that consent of birth mother was not required where mother did not attempt to visit child or check on child's wellbeing and she did not adequately provide for support and maintenance of child, while adoptive mother testified that she did not block birth mother's attempts to contact child; because mother did not have justifiable cause for lack of support, she forfeited her right to withhold consent to petition, R.C. 3107.07(A).

Property division/Medical school debt. Yousef v. Iskander | 2022-Ohio-3126 | 9th Appellate District | 09/07/2022 In divorce action in which husband disputed division of property, trial court erred in finding that student loans allocated to husband's tuition and educational expenses were not marital debt and that the full amount should allocated to husband where husband enrolled in medical school with wife's full support after attempts to become licensed under degree from former country of residence failed, and the fact that wife never saw economic fruition of husband's additional education did not transform the nature of the debt from marital to separate property, R.C. 3105.171.

Divorce proceedings/Participation. Cullimore v. Cullimore | 2022-Ohio-3208 | 4th Appellate District | 09/07/2022 In divorce action in which husband argues that his incarceration prevented

him from introducing evidence on his own behalf, resulting in inappropriate division of property and inappropriate allocation of parental rights, trial court did not err in proceeding without husband's participation where husband was incarcerated and chose not to hire counsel to assist in filing documents requested by the court, husband demonstrated full awareness of proceedings by filing various motions, the court attempted to accommodate husband's request to be present for the final hearing by videoconference, and any lack of meaningful participation throughout the proceedings was husband's fault.

Civil protection order/Jurisdiction/Electronic communications. Goddard v. Goddard | 2022-Ohio-3113 | 11th Appellate District | 09/06/2022 Dismissal of father's petition for a civil protection order against his out-of-state son for lack of personal jurisdiction was error where father's petition is entirely based on the content of electronic communications sent to father's attorneys in Ohio, it has been recognized that the existence of telephonic and electronic communications that originate from out-of-state respondents to in-state petitioners satisfies Ohio's long-arm statute for the purpose of protection orders as long as the content of the communications forms the basis of the alleged tortious conduct, and the trial court's exercise of jurisdiction is reasonable and would not deprive son of the right to due process.

Child support/Change in circumstances. Kulis v. Kulis | 2022-Ohio-3114 | 11th Appellate District | 09/06/2022 In divorce action in which wife sought modification of child support order, trial court did not err in finding no substantial change in circumstances to warrant modification of support where wife decided to enroll children in private school and agreed under shared parenting plan to pay the tuition, and the child support downward deviation factors under R.C. 3119.23 did not apply because there was no substantial change in circumstances, R.C. 3119.79.

Property division/Tort settlement/Interest. Jones v. Jones | 2022-Ohio-3074 | 2nd Appellate District | 09/02/2022 In divorce action in which husband disputed the division of tort settlement proceeds where the trial court, on remand, determined that the

proceeds were marital property, the trial court did not err in dividing the funds that remained after wife spent a portion of the funds while unemployed; however, the court erred in failing to divide interest earnings on the settlement funds since R.C. 1343.03(A) provides for interest due and payable in a divorce decree settlement at a rate set by R.C. 5703.47, and husband was entitled to any investment earnings accrued over the statutory interest rate on his portion of the settlement proceeds after the valuation date designated by the court.

Custody/Parenting time order. Wilkes v. Wilkes | 2022-Ohio-3080 | 2nd Appellate District | 09/02/2022 In divorce action in which wife failed to follow parenting time order, the trial court did not err in finding wife in contempt where there was no evidence of a written agreement reflecting wife's allegation that husband had agreed for her to take the children during his scheduled time, and husband proved the existence of the court order and wife's noncompliance with its terms.

Property division/Tracing ownership. Gantous v. Basing | 2022-Ohio-3001 | 11th Appellate District | 08/29/2022 In divorce action in which both parties objected to magistrate's decision, trial court erred in finding that part of the equity in parties' real property was wife's separate property where wife failed to present documentation tracing the amount of separate property at the time of marriage, the property was commingled with the marital estate during marriage because loan proceeds were used for improvements and marital funds were used to pay loan, and labor for improvements provided by the parties destroyed the property's identity as wife's separate property, R.C. 3105.171(A)(6)(b).

Adoption/Consent. In re Petition for Adoption of A.V. | 2022-Ohio-2969 | 6th Appellate District | 08/24/2022 In stepmother's petition to adopt child, trial court did not err in finding that father's consent was required where father's lack of contact with child was justified because mother significantly discouraged contact with child, mother did not want father to have a relationship with child even though he had a good relationship with child's sibling, mother made unilateral decisions preventing father from seeing child's sibling, and father was afraid to demand to see child, R.C. 3107.07.

Civil protection order. A.M. v. M.J.M. | 2022-Ohio-2945 | 5th Appellate District | 08/23/2022 Denial of petition for domestic violence civil protection order was not error where the parties argued about petitioner's plan to take the parties' child to dinner, respondent pushed petitioner's sister when taking child from her and attempted to put child in a car seat from which child fell but was caught by respondent, so while respondent's behavior was found by the court to be inappropriate, negligent and reckless, the behavior was not intentional or purposeful, and the court ruled that there was no evidence that petitioner and her household were in imminent danger from respondent, R.C. 3113.31(A).

Attorney fees/Settlement agreement. Sharif v. Sharif | 2022-Ohio-2856 | 1st Appellate District | 08/17/2022 In divorce action in which father sought modification to parenting time, trial court erred in awarding attorney fees to mother and in ordering father to sign draft agreed entry on child support where mother failed to present evidence as to reasonableness of attorney fees pursuant to R.C. 3105.73(B), and terms of settlement agreement from the mediation process were disputed and therefore should not have been adopted.

Property division. Woeste v. Woeste | 2022-Ohio-2825 | 12th Appellate District | 08/15/2022 In divorce action in which husband challenged the division of property, trial court erred in awarding to wife half of husband's business bank account where husband was sole proprietor of the business, and the parties' stipulation provided that husband would receive all interest in business free and clear of any interest of wife.

Contempt/Fine/Fair hearing. Jowiski v. Gustafson-Jowiski | 2022-Ohio-2816 | 9th Appellate District | 08/15/2022 In divorce action in which husband sought modification of order awarding to wife half of his retirement benefits accrued during marriage, trial court erred in dismissing wife's objections to magistrate's decision on the basis that she had not paid a fine imposed for contempt since prohibiting wife from filing anything with clerk of courts until she paid the fine unreasonably affected her ability to object to the magistrate's decision as well as her ability to raise issues on appeal.

Child support. Geter v. Geter | 2022-Ohio-2804 | 2nd Appellate District | 08/12/2022 In divorce action in which husband failed to pay child support arrearage, trial court did not err in finding husband in contempt where claim that his obligation was held in suspension under R.C. 3119.06(A) because he had a minimum child support order and was receiving means-tested assistance at the time of the contempt hearing is without merit since the case involved default rather than a minimum child support order, even if the statute were applied there was no evidence that husband was on any type of need-based assistance to excuse him from being held in contempt, and R.C. 3121.36 and 3123.14 provide for collection of unpaid support and arrearages and allow for a finding of contempt, even though the support order had been terminated.

Child support. A.A.O. v. A.M.O. | 2022-Ohio-2767 | 8th Appellate District | 08/11/2022 In divorce action, the trial court erred in its calculation of child support where, although wife was correctly found to be voluntarily unemployed and had income imputed to her, her gross income including spousal support was incorrectly stated on the child support computation worksheet, leading to the calculation error, R.C. 3119.01(C).

Divorce/Marriage validity. Momotaz v. Sattar | 2022-Ohio-2676 | 8th Appellate District | 08/04/2022 In divorce action in which husband challenged ruling on validity of telephonic foreign marriage, summary judgment in favor of wife on validity of marriage was not error where parties agreed that marriage met the essentials of religious and foreign marriage rules, the Registration Act provides for religious marriage to be registered in accordance with the Act, but non-registration does not render marriage invalid because marriage under religious law is a purely civil contract, and husband availed himself of foreign laws even though he resided in the United States.

Annulment. Quezada v. Vizcaino | 2022-Ohio-2683 | 8th Appellate District | 08/04/2022 In dispute between married parties in which the trial court ordered the marriage annulled on reasoning that the marriage was obtained fraudulently where, inter alia, after the parties married and moved to the U.S., the wife lived with another man until shortly before immigration

interview, the trial court did not err in denying wife's Civ.R. 60(B) motion for relief from judgment since there was no evidence to support wife's assertion that the domestic relations proceeding was based on a mutual mistake between the parties.

Insurance

Homeowner's/Policy limitations.

Ransom v. Erie Ins. Co. | 2022-Ohio-3528 | 7th Appellate District | 09/30/2022 In insureds-home owners' breach of contract and bad faith action against insurer for refusal to pay the entire cost to repair wind-damaged roof, the trial court erred in granting insurer's motion to dismiss since the limitation of action clause in the policy did not apply because the parties were engaged in ongoing negotiations about the value of the claim when the limitations period expired, and insurer waived the limitations clause based on its conduct in recognizing liability, giving insureds reasonable hope of payment.

Motor vehicle/Settlement.

Moton v. Schafer | 2022-Ohio-3505 | 6th Appellate District | 09/30/2022 In plaintiffs' breach of contract action to recover damages from decedent-driver's insurer arising from vehicle accident with decedent, trial court did not err in finding the existence of a valid prelitigation settlement agreement where the essential terms of the agreement were not ambiguous, plaintiffs signed a full and final release, the journalized entry contained no finding of a breach of contract by insurer, and plaintiffs never made a demand for increased settlement and court costs, R.C. 1343.03.

Homeowner's/Value of loss/Transcript.

Ocheltree v. Pike Mut. Ins. Co. | 2022-Ohio-3304 | 5th Appellate District | 09/20/2022 In insureds-home owners' declaratory judgment, bad faith, and breach of contract action against insurer after fire loss, arising from insurer's paying insureds the actual cash value of damage to their home rather than the full replacement value, resulting in a jury verdict for insurer, trial court's denial of insureds' motion for a JNOV is affirmed since insureds failed to provide a transcript to show if the trial court erred in failing to render a separate declaration of parties' rights, the jury found that insurer did not breach the contract, and in denying insureds' request to rule on the declaratory judgment action, the trial court

concluded that the insureds' claims were the same that were made to, and rejected by, the jury.

Uninsured motorist/Use of vehicle.

Ameduri v. Machine Technology & Field Serv. | 2022-Ohio-3423 | 7th Appellate District | 09/19/2022 In drill rig operator's personal injury action against company-owner of drill rig, seeking uninsured motorist insurance coverage from company's insurer for injuries sustained when he was forced to leap off rig when it allegedly malfunctioned, summary judgment in favor of insurer was not error since the rig operator was not owed uninsured motorist coverage under R.C. 3937.18(A) because the drill rig was designed to be used mainly off public roads and did not meet the definition of an uninsured motor vehicle at the time of the accident.

Commercial general liability/Bodily injury/Opioid epidemic.

Acuity v. Masters Pharmaceutical, Inc. | 2022-Ohio-3092 | Supreme Court of Ohio | 09/07/2022 In action by insurer, whose policies covered damages because of bodily injury, to declare that it had no duty to indemnify insured-pharmaceutical distributor in actions by several governments for economic losses caused by the opioid epidemic, trial court's summary judgment for insurer was not error since the governments sought damages for their own economic losses, they did not tie their alleged economic losses to particular bodily injuries sustained by their citizens, and their claims related to the aggregate economic injuries they experienced because of the opioid epidemic.

Coverage/Damages/Abatement fund payments.

Sherwin-Williams Co. v. Certain Underwriters at Lloyd's London | 2022-Ohio-3031 | 8th Appellate District | 09/01/2022 In insured's action to declare coverage, under applicable insurance policies, for monies ordered by a California court to be paid by insured into a fund for the abatement of lead paint used in residences in that state, trial court erred in granting a summary judgment to insurers on reasoning that there were no recoverable damages because an abatement order is an equitable remedy, while damages are a legal remedy; insured's payments into the abatement fund qualify as damages under the applicable policies which provide indemnity coverage for all sums that insured becomes legally obligated

to pay as or for damages, Certain Underwriters at Lloyd's London, which held that abatement fund payments were made to the state government to reimburse monies depleted by remediation of lead paint contamination, qualifying the payments as damages.

Juvenile

Delinquency.

In re R.Z. | 2022-Ohio-3630 | 1st Appellate District | 10/12/2022 In appeal by the state of the juvenile court's order finding no probable cause to believe that in 2015 the juvenile committed adult burglary under R.C. 2911.12(A)(1), the juvenile court did not err in finding that the state did not meet its burden of verifying that state laboratory's preliminary DNA association between the juvenile and biological evidence recovered was supported by additional verification in order to establish probable cause; also discussed, subject matter jurisdiction and final, appealable order.

Custody.

In re C.L. | 2022-Ohio-3596 | 12th Appellate District | 10/11/2022 Award of legal custody of dependent and neglected children to maternal grandparents is reversed where incarcerated father was unable to attend hearing due to pandemic lockdown and was denied a continuance, additional safeguards such as a short continuance would have likely eliminated the chance that father's parental rights would be erroneously deprived, and even though a continuance would not be ideal, it would not require dismissal of complaints under the time limit for a dispositional hearing under R.C. 2151.35(B)(1).

Custody.

In re H.H. | 2022-Ohio-3575 | 2nd Appellate District | 10/07/2022 Award of permanent custody of dependent children to agency was not error where, although father complied with some case plan objectives, he failed to attend counseling or conflict resolution classes, he believed none of his children required special medical care, he had difficulty providing children with transportation to school and appointments, and he had a hostile relationship with children's foster parents, while children were thriving under care of foster parents, R.C. 2151.414.

Custody/Non-parent vs. parent/Abandonment presumption. In re C.R. | 2022-Ohio-3540 | 1st Appellate District | 10/05/2022 Award of legal custody of child to maternal grandfather and his wife on reasoning that the biological father abandoned child and that awarding custody to father would be detrimental to child was error since father credibly testified that he did not believe he was the father of child until he received the results of paternity test, with that knowledge, father filed for custody of the child in the same month, and there was insufficient evidence to establish that awarding custody to father would be detrimental to child, R.C. 2151.23(A)(2); regarding the presumption of abandonment, the conduct, belief or knowledge of the parent in relation to the child may be considered when determining whether a parent has abandoned his or her child.

Bindover. State v. Cunningham | 2022-Ohio-3497 | 6th Appellate District | 09/30/2022 Following transfer of juvenile case to adult court on, inter alia, felony murder charges, juvenile pled to felony murder, juvenile's claim that his constitutional rights were violated during the amenability phase is without merit where, although the trial court misspoke by stating that it was required to "assume guilt" during the amenability phase, since the presumption of innocence is not implicated during an amenability hearing, the court did not violate juvenile's constitutional rights in making its amenability determination; also, since the state did not initiate a serious youthful offender disposition, the juvenile court was not required to consider a blended sentence as part of its amenability determination.

Custody/Service/Jurisdiction. In re J.S. | 2022-Ohio-3465 | 9th Appellate District | 09/30/2022 Award of permanent custody of child to agency is affirmed where mother's argument that lack of proper service on father divested the juvenile court of jurisdiction is without merit since mother does not have standing to challenge the lack of service on father where there is nothing in the record to indicate that father's participation throughout the case would have benefitted mother, and father did waive any defects in service on the record; personal jurisdiction, unlike subject matter jurisdiction, may be waived, so a judgment issued in the absence of properly invoked personal jurisdiction is merely voidable, not void ab initio, and the lack of service

on father did not impact the juvenile court's properly invoked subject matter jurisdiction.

Delinquency. In re J.T. | 2022-Ohio-3466 | 9th Appellate District | 09/30/2022 Adjudication of juvenile as delinquent of adult criminal damaging and vandalism was supported by sufficient evidence since victim was a self-employed home health aide whose car was the target of the criminal acts since a home health aide's occupation requires continuous transportation to and from various homes to meet the needs of patients, Uballe, and the conviction was not against the weight of evidence where there was testimony by one of the juveniles involved that it was appellant's idea to damage the victim's car, and that she solicited two other juveniles to aid her.

Delinquency. In re V.H. | 2022-Ohio-3432 | 8th Appellate District | 09/29/2022 Adjudication of juvenile as delinquent for acts constituting adult rape (three counts) and gross sexual imposition against a four year-old girl met the sufficiency and weight of evidence standards since the trial court did not err by admitting the victim's statements made to the SANE nurse and case worker since, even though the child was found incompetent to testify, that did not prohibit the admission of the child's statements because under Evid.R. 807, the state may offer a child's out-of-court statement as evidence if the child is under 12, the statement describes a sexual act and the state satisfies the four additional elements contained within the rule.

Custody/Grandparent/Jurisdiction. In re K.G. | 2022-Ohio-3218 | 9th Appellate District | 09/14/2022 In grandparents' dispute about custody of dependent child, trial court erred in denying grandmother's motion for extended vacation time with child and in removing her as a party in the case on reasoning that because dependent child was born to legally married parents and neither parent is deceased, grandmother's earlier-issued companionship order was void; juvenile courts have jurisdiction over dependency cases so the earlier-issued companionship order was not void and the trial court lacked authority to vacate it and base its future decisions on its ruling that the order was void, including removal of grandmother as a party.

Custody. Maran v. Clark | 2022-Ohio-3175 | 9th Appellate District | 09/12/2022 In custody action in which father sought reallocation of parental rights and responsibilities, trial court did not err in retaining mother as residential parent and legal custodian where, although the court found a change in circumstances under R.C. 3109.04 due to decline in child's grades and change of residence, moving the child to father's primary care would not be in child's best interest, the child's grades are likely to improve with resumption of in-person schooling, and mother's relationship and housing situations have improved.

Custody. In re Z.C. | 2022-Ohio-3199 | 11th Appellate District | 09/09/2022 Award of permanent custody of dependent and neglected child to agency was in child's best interest, even though father asserts that permanent custody would separate child from his siblings, where, inter alia, father informed the agency that he did not have a house big enough for all his children and that he had not had contact with them for approximately three years, and throughout the pendency of the case, father never followed through on a home visit, father consistently maintained that he did not want to be added to the case plan, and father failed to keep appointments to meet with the case worker, while the child has been with his foster family and half-brother and is closely bonded with them, R.C. 2151.414.

Abused/Dependency. In re C.K. | 2022-Ohio-3121 | 9th Appellate District | 09/07/2022 Adjudication of children as abused and/or dependent was error since the agency failed to show that the single incident in which mother disciplined her child with a belt constituted abuse, there was no medical evidence as to extent of child's injuries or that child suffered pain, evidence showed that mother disciplined child for extreme misbehavior that potentially jeopardized family's safety and not because she was upset or angry, and the finding of dependency for all children was based on the finding of abuse, which was not supported by clear and convincing evidence, R.C. 2151.031, 2151.04.

Custody. In re E.H. | 2022-Ohio-3124 | 5th Appellate District | 09/07/2022 Denial of grandmother's motion for legal custody and awarding agency permanent custody of dependent and neglected child was in child's best interest where, inter alia, child was born addicted to cocaine and marijuana and is currently in weekly speech therapy and physical therapy twice a month and has medical appointments for eczema and early cerebral palsy, all of child's special needs are being met by the foster family who wishes to adopt child, and child turns to his foster family for reassurance and comfort, R.C. 2151.414.

Dependency/Dismissal/Standing. In re L.B. | 2022-Ohio-3122 | 9th Appellate District | 09/07/2022 In adjudication of children as dependent, trial court erred in granting mother's motion to dismiss where mother was properly served and, although fathers of children were not properly served because they were unknown throughout the proceedings, mother lacked standing to request dismissal on their behalf since she was not directly affected by any service defect under the requirements of Civ.R. 4.4(A)(2), and a defect in service did not deprive trial court of subject matter jurisdiction.

Custody/Due process. In re J.C.B. | 2022-Ohio-3098 | 12th Appellate District | 09/06/2022 Award of legal custody of dependent child to paternal aunt and uncle was error where a virtual review hearing was held in mother's absence because she was technologically unable to attend, there was no evidence that magistrate attempted to contact mother to determine if she had difficulty logging in to hearing, the court did not explain why it was in child's best interest to proceed with its determination in mother's absence rather than wait for the scheduled in-person hearing, and mother was not afforded a meaningful opportunity to be heard on her objections to magistrate's decision.

Custody/School. In re G.D-M. | 2022-Ohio-3023 | 9th Appellate District | 08/31/2022 Designation of mother as residential parent of children for school purposes was not error where father tested positive for drug use, he was supportive of children's schooling but was more reliant than mother on support from extended family in facilitating schooling, mother's house was within walking distance of schools,

and mother showed strong commitment to children's schooling and was better equipped to assist them with educational needs, R.C. 3109.04.

Delinquency. In re J.C. | 2022-Ohio-2993 | 3rd Appellate District | 08/29/2022 In adjudication of juvenile by admission as delinquent for adult discharging a firearm at or into a habitation, R.C. 2923.161, the juvenile court did not err by committing the juvenile to the department of youth services for a minimum period of one year and a maximum period not to exceed his attainment of 21 years of age in view of the seriousness of the juvenile's conduct in using a firearm to try to solve a problem in view of the safety issues involved, and juvenile does not present any reason other than a difference in opinion for reversing his order of commitment.

Custody/Change of circumstances. Massong v. Tyner | 2022-Ohio-2933 | 1st Appellate District | 08/24/2022 In father's petition for custody of child and mother's request to suspend father's visitation, trial court did not err in designating mother as custodial parent and in granting father visitation where mother's relocation within same county and child's nominal age progression were not sufficient to constitute a change in circumstances, and although the magistrate erred in relying on evidence presented at emergency motion hearing, the trial court properly determined that the error was harmless because evidence from full custody hearing was sufficient to support magistrate's decision, R.C. 3109.04.

Jurisdiction/Disposition deadline. In re S. Children | 2022-Ohio-2941 | 1st Appellate District | 08/24/2022 In adjudication of children as abused, neglected and dependent and issuance of a dispositional order granting legal custody of the surviving minor children to relatives, trial court's judgment is reversed for lack of jurisdiction since the dispositional hearing was not held within the mandatory deadline under former R.C. 2151.35(B)(1), amended complaint filed prior to the deadline contained the same allegations as the first and therefore had no effect on the deadline, parents' waiver of the statutory deadline did not occur prior to its expiration, and court had already lost jurisdiction when the third amended complaint seeking different relief was filed.

Bindover/Right to counsel. State v. Taylor | 2022-Ohio-2877 | 10th Appellate District | 08/18/2022 In a conviction of juvenile following bindover of felony murder by felonious assault, the juvenile court erred in finding probable cause that appellant was complicit in the murder warranting bindover to the general division since complicity to purposeful murder under R.C. 2903.02(A) is not an equivalent "act charged" to felony murder by felonious assault under R.C. 2903.02(B) for purposes of transferring jurisdiction of juvenile from the juvenile division to the general division, Smith; also, juvenile's right to counsel was violated where juvenile was interrogated by an officer who was aware that juvenile was represented by counsel.

Jurisdiction/Adoption/Parentage. In re A.R.W. | 2022-Ohio-2874 | 4th Appellate District | 08/16/2022 In putative father's action seeking to establish parenting rights and motion to intervene in underlying petition for adoption, juvenile court did not err in dismissing parentage complaint and in denying the motion for lack of jurisdiction since putative father's filings occurred after the adoption action was in progress and a decision on parentage was irrelevant to the adoption proceeding, and putative father lacked standing to file a Civ.R. 60(B) motion to vacate judgment because he was not party to adoption proceeding.

Custody/Guardian ad litem. In re K.S. | 2022-Ohio-2827 | 12th Appellate District | 08/15/2022 Award of legal custody of children to aunt is reversed where two of the children were alleged to be dependent and neglected and a third child was also alleged to be abused, but the juvenile court failed to appoint the children a guardian ad litem (GAL), as required by R.C. 2151.281(B)(1) and Juv.R. 4(B), the right to the appointment of a GAL belongs to the children, and parents' failure to request the appointment of a GAL or object to the juvenile court's procedures did not waive the court's mandatory duty to appoint a GAL.

Delinquency. In re E.J.L. | 2022-Ohio-2846 | 4th Appellate District | 08/12/2022 Following adjudication of juvenile as delinquent for adult minor misdemeanor marijuana possession and subsequent violation of community control, commitment of juvenile to county juvenile center's temporary

custody to complete a rehabilitation program and to perform a minimum of 100 community-service hours was not plain error since juvenile's failure to comply with the initial terms the juvenile court imposed resulted in the court choosing a next-level disposition by committing juvenile to the juvenile center, and the juvenile court was not precluded from imposing more than 30 hours of community-service hours permitted by R.C. 2152.419(A)(4)(d) in view of the discretion given to juvenile courts under R.C. 2152.19(A)(8).

Delinquency. In re B.A. | 2022-Ohio-2775 | 8th Appellate District | 08/11/2022 Adjudication of juvenile as delinquent of adult felonious assault, R.C. 2903.11(A)(1), was supported by the weight of evidence where victim, although admitting that she did not see exactly who in a group of minors assaulted her, testified the juvenile was one of the individuals who attacked her after she was knocked down and she knew he was involved because she was stomped on by a person with a large foot and the juvenile is in a surveillance video standing directly over the victim while she was being physically assaulted on the ground, and the individual matching the juvenile's description is making a stomping motion with his right leg while in the victim's proximity.

Sealing. In re W.D.K. | 2022-Ohio-2724 | 12th Appellate District | 08/08/2022 Denial of application to seal adjudications of five delinquency cases was not error since appellant's extensive juvenile record involving crimes that would have constituted felony fraud if committed by an adult, his multiple adult convictions involving multiple fraud-based offenses and his interchangeable use of two names and the social security numbers assigned to the respective names when he has been in criminal trouble demonstrate he has not been rehabilitated to a satisfactory degree, R.C. 2151.356(C)(2) (e).

Custody/Reinstatement of judgment. In re A.S. | 2022-Ohio-2670 | 8th Appellate District | 08/04/2022 In custody dispute resulting in reversal and remand of trial court's original permanent custody judgment, instructing the court to order legal custody instead, where mother failed to execute the necessary documentation to comply with the court of appeals' mandate, trial court's reinstatement of its original decision granting permanent custody is

affirmed since the trial court complied with the court of appeals' mandate to afford mother another opportunity to complete the necessary documentation, and mother has provided no legal authority to challenge trial court's judgment granting the agency's motion to reinstate the award of permanent custody.

Delinquency/Sexual offender. In re A.J. | 2022-Ohio-2669 | 8th Appellate District | 08/04/2022 In adjudication of juvenile as delinquent of two counts of adult gross sexual imposition, R.C. 2907.05(A)(1) and (A)(4), classification of juvenile as a Tier II sexual offender was not error since the juvenile court considered the R.C. 2152.83(D) factors, and juvenile is the victim's uncle and he was her babysitter at the time of the incident and the relationship facilitated the offenses, and victim's tender age of four years-old at the time of the offenses exacerbated her mental injuries.

Labor and Employment

Back pay/Arbitration award. E. Cleveland IAFF 500 v. E. Cleveland | 2022-Ohio-3668 | 8th Appellate District | 10/13/2022 In firefighters' union's action against city and officials seeking back pay for union members under collective bargaining agreement (CBA), resulting in arbitration award for union, trial court did not err in granting union's application to confirm the arbitration award where city failed to file a motion for modification or vacation of award, the court was required to confirm the award pursuant to R.C. 2711.09, and award of damages was consistent with arbitration award and CBA.

Federal Employers' Liability Act/ Limitations. Metz v. CSX Transp. Corp. | 2022-Ohio-3503 | 6th Appellate District | 09/30/2022 In employee's claim under the Federal Employers' Liability Act asserting that employer-railway company's negligence led to his serious health conditions, summary judgment in favor of employer was not error since the claim was not commenced within the time period specified under 45 U.S.C. 56 where the statute began to run when employee's physician alerted him to the connection between his conditions and his employment, and the discovery rule was triggered because the employee should have known of his injury and its cause, even though he failed to exercise due diligence to investigate.

Age discrimination. Hardy v. The Anderson's, Ins. | 2022-Ohio-3357 | 6th Appellate District | 09/23/2022 In employee's age discrimination action against former employer for terminating his employment while he was out of the country, trial court did not err in granting summary judgment to employer since employee provided no direct proof of discrimination, he relocated to another country without informing employer, and although he showed that he was qualified for the job based on objective expectations, he failed to show that the younger new employee who assumed just a part of employee's responsibilities held his same position or that the new employee performed a substantial portion of his job; also, an employee is not replaced when another employee is assigned to perform the terminated employee's duties in addition to other duties or when the work is redistributed among other existing employees already performing related work.

Separation agreement/Negotiation process. Katz v. Univ. Hosp. Health Sys., Inc. | 2022-Ohio-3328 | 8th Appellate District | 09/22/2022 In physician's action against former employer to set aside an employment separation agreement, alleging fraudulent inducement and related claims for actions employer took during negotiation of the agreement, trial court erred in granting employer's motion to dismiss where questions remain about the procedure purportedly used by the parties in its modification of the drafts during negotiations, the time-constraints known by the parties in the execution of the separation agreement, and the allegations of material misrepresentations, and the issues cannot be resolved by a Civ.R. 12(B)(6) motion to dismiss.

Sexual harassment/Immunity. Shine v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-3651 | Court of Claims | 09/21/2022 In contractor's action alleging that she was the target of sexual harassment by an employee of state department, magistrate recommends that trial court rule that employee is not entitled to governmental immunity under R.C. 9.86 where contractor's testimony credibly established that employee engaged in a pattern of inappropriate conduct toward her, including excessive and unwanted personal attention, inappropriate comments about her appearance, and invitations to engage in sex, with the result that employee's conduct was

Labor and Employment (Continued)

plainly not part of his job duties and had no purpose in serving department's interest.

Retroactive pay increase/CBA/Unfair labor practice. Akron Assn. of Classified Personnel v. Akron City School Dist. Bd. of Edn. | 2022-Ohio-3216 | 9th Appellate District | 09/14/2022 In plaintiffs-teachers association and former employees' action against defendant-school district board of education seeking payment for a retroactive wage increase provided by current collective bargaining agreement (CBA), which was only ratified after former employees left employment, the trial court erred in granting defendant's motion to dismiss for lack of subject matter jurisdiction since plaintiffs' claims did not involve an unfair labor practice because, although the claims arose from CBA rights created by R.C. Ch. 4117, there is no statutory provision involving a right to a retroactive pay raise, so the State Employment Relations Board did not have exclusive jurisdiction.

Picketing restriction/Constitutionality/First Amendment. Portage Cty. Educators Assn. for Dev. Disabilities-Unit B, OEA/NEA v. State Emp. Relations Bd. | 2022-Ohio-3167 | Supreme Court of Ohio | 09/13/2022 In labor relations dispute between county board, a public employer under R.C. 4117.01(B), and educators' association, an employee organization under R.C. 4117.01(D), resulting in trial court's ruling that the association had committed an unfair labor practice by encouraging picketing outside private residences and place of business of county board members in violation of R.C. 4117.11(B)(7), the court of appeals did not err in reversing the trial court since the statute is a content-based regulation of expressive activity that violates the First Amendment where the statute would have to be narrowly tailored to serve a compelling government interest in order to survive strict scrutiny that applies to content-based regulations of expressive activity, and the goals of that statute, while significant, do not serve a compelling government interest; also, this judgment answers a certified-conflict issue.

Discrimination/Accommodation. Ferguson v. Univ. Hosp. Health Sys., Inc. | 2022-Ohio-3133 | 8th Appellate District | 09/08/2022 In action by nurse with a disability asserting that hospital violated the Ohio Civil Rights Act, R.C.

Ch. 4112, by placing him on leave and not allowing him to return to work, pending medical clearance, arising from hospital's new policy requiring nurses to work 12-hour shifts rather than 8-hour shifts, trial court did not err in granting summary judgment to the hospital since hospital's stated reasons for its actions are legitimate and nondiscriminatory where the hospital explained that scheduling the nurse for an 8-hour shift while all the other nurses worked 12-hour shifts would be disruptive and negatively impact patient care and also allowing the nurse to continue working 12-hour shifts was not medically authorized by nurse's physician and would put the nurse and his patients at risk.

Wrongful termination/Public policy. Rowe v. Hoist & Crane Serv. Group, Inc. | 2022-Ohio-3130 | 8th Appellate District | 09/08/2022 In plaintiffs-employees' wrongful termination action in violation of public policy under R.C. 4101.11, alleging retaliation for reporting workplace safety issues, trial court did not err in granting defendant-employer's motion for judgment on the pleadings since plaintiffs failed to establish the public policy clarity element by not citing to a specific source of public policy that was violated by defendant's conduct, R.C. 4101.11 is a premises liability statute and does not cover workplace safety issues, and plaintiffs did not allege that defendant kept the premises in an unsafe condition or that defendant failed to warn of concealed perils, so plaintiffs failed to establish that termination was in violation of clear public policy under the statute.

Unemployment compensation/Capable of working. Mick v. Dir., Ohio Dept. of Job & Family Servs. | 2022-Ohio-3047 | 5th Appellate District | 09/01/2022 In employee's application for unemployment compensation benefits following surgery, the trial court did not err in affirming review commission's denial of benefits since employee's testimony that he was physically capable of working from the date he was discharged from the hospital after surgery was not sufficient to meet the requirements of R.C. 4141.29(A), he failed to present evidence that a physician had released him to work, and there was competent and credible evidence that he was not physically able to work.

Employment/Compensation. Hlad v. Step Lively Foot & Ankle Ctrs., Inc. | 2022-Ohio-3060 | 10th Appellate District | 09/01/2022 In plaintiffs-podiatrists' action against defendant-partnership asserting that they were due income continuation and unpaid compensation following their resignations, summary judgment in favor of defendant was not error where, on the date plaintiffs left the practice, they were paid for all the time they had worked, the plaintiff who had previously sought to become a partner did not complete a stock buy-in and was not eligible for income continuation, and even if the pertinent contract clause was determined to be ambiguous, defendant offered extrinsic evidence establishing the method for computing salaries.

Retaliation/Adverse employment action. Pettay v. Adtalem Global Edn., Inc. | 2022-Ohio-3015 | 10th Appellate District | 08/30/2022 In plaintiff-former employee's action, alleging that defendants-employer and related individuals retaliated against him by filing a motion for costs after they prevailed in plaintiff's earlier age discrimination action, trial court erred in granting defendants' Civ.R. 12(B)(6) motion to dismiss since defendants' motion for costs of deposition transcripts used in support of their summary judgment motion in plaintiff's discrimination action constituted an adverse employment action taken against plaintiff pursuant to R.C. 4112.02(I) and former R.C. 4112.99.

Public employees/Conciliation award. Ohio Patrolmen's Benevolent Assn. v. Olmsted Falls | 2022-Ohio-2958 | 8th Appellate District | 08/25/2022 In patrolmen's union's appeal of denial of its motion to vacate a labor conciliation award to city, trial court did not err in denying union's motion to vacate where no grounds existed to vacate the award because conciliator's conduct and award were not acts of misbehavior or acts exceeding the conciliator's powers under R.C. 2711.10, and even though the city did not submit a copy of its pre-hearing statement to the state board, the union received a copy, and exclusion of evidence would negate due process and result in inequitable outcome.

Unfair labor practice/Teaching position/Arbitration. State ex rel. Thelen v. State Emp. Relations Bd. | 2022-Ohio-2883 | 1st Appellate District | 08/18/2022 Teacher's petition for a writ

of mandamus to compel state board to investigate his unfair labor practice charge after school district hired outside candidates for open teaching positions is granted where teacher's allegation that he was denied a second position in retaliation for filing a grievance over denial of first position, in violation of R.C. 4117.11, was not considered by arbitrator, and board's dismissal of retaliation charge based on arbitrator's decision concerning first position was unreasonable.

Overtime pay/Arbitration. Cuyahoga Cty. Court of Common Pleas, Juvenile Div. v. Laborers' Internatl. Union of N. Am., Local Union No. 860 | 2022-Ohio-2866 | 8th Appellate District | 08/18/2022 Granting plaintiff-juvenile court's R.C. 2711.11(B) motion, seeking modification of arbitration award of overtime pay for suspended detention officer involved in abuse investigation, was not error where the sole issue before the arbitrator was the existence of just cause for officer's suspension and not the issue of overtime pay, and award of overtime pay conflicted with express terms of collective bargaining agreement, R.C. 2711.11.

Sexual harassment. Klotz v. Game On Sports Bar & Grill | 2022-Ohio-2847 | 1st Appellate District | 08/17/2022 In employee's hostile environment action against former employer alleging failure to take appropriate action when employee was sexually harassed by coworker, summary judgment in favor of employer was not error since employer gave coworker a verbal warning that further inappropriate conduct would result in termination, it gave employee the option to never work alone with coworker, video evidence of alleged harassment was inconclusive, and there was no evidence that coworker engaged in harassing conduct after employee reported incident to employer, R.C. 4112.02.

Grievance/Mandamus. State ex rel. Casey v. Brown | 2022-Ohio-2843 | 7th Appellate District | 08/11/2022 Firefighter's petition for a writ of mandamus seeking to compel city to promote him to a recently vacated position is denied where his claims are covered by union's collective bargaining agreement with city, firefighter's grievance was advanced as far as possible through the grievance procedure until the union declined to pursue the claim, and because the arbitration procedure was an adequate

remedy at law pursuant to R.C. 4117.10, relief in mandamus is precluded.

Unemployment compensation/Overpayment. Carden v. Ohio Dept. of Job & Family Serv. | 2022-Ohio-2786 | 5th Appellate District | 08/10/2022 In unemployment compensation administrative appeal, trial court's ruling that claimant did not violate R.C. 4141.35(A), related to fraudulent misrepresentation, when she failed to amend her earnings report to account for tips she received in addition to her regular compensation, was error since the correct test in the instant district requires only that the claimant make a false statement, knowing the statement is false or having reason to believe the statement is false, but the trial court incorrectly added the requirement that a claimant must have a subjective intention to defraud the State of unemployment benefits.

Compensation/Implied contract. Jones v. BPR/RICO Mfg., Inc. | 2022-Ohio-2715 | 9th Appellate District | 08/08/2022 In breach of contract and promissory estoppel action by terminated employee arising from failure to increase employee's compensation after initial raise, the trial court did not err in granting employer's motion for summary judgment since employer's representations that it would schedule meetings to discuss employee's salary and its assignment of additional responsibilities to employee did not create an implied contract that employee would receive increased compensation, and there is no evidence that employer made a clear and unambiguous promise to employee that he would receive a raise.

Discrimination/Retaliation. Townsend v. Kettering | 2022-Ohio-2710 | 2nd Appellate District | 08/05/2022 In employee's race discrimination and retaliation action, arising from selection of another candidate for the position of fire captain, even though employee was subsequently promoted to captain, and alleged treatment of employee after he filed a complaint with civil rights commission, the trial court did not err in denying defendants-fire chief and assistant chief's governmental immunity-based motion for summary judgment since, inter alia, construing the evidence in the light most favorable to employee, genuine issues of material fact existed as to whether defendants engaged in a concerted effort to thwart employee's promotion for unjustified

reasons by underrating his performance on his annual evaluations, R.C. 2744.06(A)(6)(b).

Procedure

Dismissal/Refiled claim/Res judicata. Ullom v. Agoston | 2022-Ohio-3813 | 8th Appellate District | 10/27/2022 On reconsideration, in home buyers' second action against sellers and related parties, alleging breach of purchase agreement because of sellers' failure to disclose faults with support systems of home, judgment on the pleadings for the sellers is affirmed on the basis of res judicata where all the claims in the second case arose from the same transaction as the first action, and home buyers' Civ.R. 41(A) voluntary dismissal of the last defendant in first case resulted in a final appealable order, precluding consideration of the same claims in the second action; under Denham, the Civ.R. 41(A) dismissal did not render the case as if no suit had ever been brought, except as to the dismissed party, allowing for the doctrine of res judicata to apply.

Frivolous conduct/Sanctions/Limitations. Kruger v. First Choice Realty Automotive, L.L.C. | 2022-Ohio-3677 | 8th Appellate District | 10/13/2022 In plaintiff's action alleging fraud and related claims, resulting in a settlement and a Civ.R. 41 notice of voluntary dismissal of claims against defendants without prejudice, prompting defendants to file a Civ.R. 11 motion for frivolous conduct and for attorney fees, the trial court erred in dismissing defendants' motion on reasoning that it lacked jurisdiction since a Civ.R. 41 dismissal does not divest a trial court of jurisdiction to entertain collateral issues, the motion was only required to be filed within a reasonable time after judgment, and plaintiff did not assert that the timing of the motion was unreasonable; defendants' motion filed pursuant to R.C. 2323.51(B)(1) was properly dismissed because it was filed outside the statutory time limit.

Disqualification of counsel/Arbitration. SW Acquisition Co., Inc. v. Akzo Nobel Paints, L.L.C. | 2022-Ohio-3674 | 8th Appellate District | 10/13/2022 In fraud, breach of contract and related claims action by plaintiff, business that purchased assets of bankrupt company, against paint company that sold stores to subsequently bankrupt company, where plaintiff sought appointment of an arbitrator to resolve claims

Procedure (Continued)

between the parties, the trial court did not err in denying defendant's motion to disqualify plaintiff's counsel as likely witnesses in the yet-to-be-filed arbitration proceeding since the issue of disqualification should be properly decided by the arbitrator.

Personal jurisdiction/Amended complaint. Williams v. MJS Ents., Ltd. | 2022-Ohio-3695 | 4th Appellate District | 10/13/2022 In employee's disability discrimination action against employer for effectively discharging him after denying his accommodation request for additional training, trial court erred in granting employer's motion to dismiss for lack of personal jurisdiction where, although employer raised the personal jurisdiction defense in response to the original complaint, employer failed to raise it again in response to the amended complaint and therefore waived the defense, Civ.R. 12(B)(2).

Attorney fees/Appeal. Cruz v. English Nanny & Governess School | 2022-Ohio-3586 | Supreme Court of Ohio | 10/12/2022 In plaintiffs-former students' wrongful discharge and related claims action against defendant-nanny school and placement service that terminated its relationship with plaintiffs following their complaint against one of defendant's clients, resulting in judgment with punitive damages in favor of the plaintiffs and subsequent appeal by defendant, the court of appeals erred in denying plaintiffs' request for attorney fees for defending their judgment on appeal on reasoning that Ohio law does not permit recovery of appellate attorney fees except in cases involving remedial statutes; when parties are awarded punitive damages at trial, they may also recover reasonable attorney fees incurred in successfully defending their judgments on appeal since this rule is consistent with the punitive-damages exception to the American rule, is not limited by statutory caps on punitive damages, and will make the lodestar calculation more accurate.

Pleading/County defendant/Sui juris. Estate of Fleenor v. Ottawa Cty. | 2022-Ohio-3581 | Supreme Court of Ohio | 10/11/2022 In wrongful death action against county, arising from death of county-owned nursing home resident, where the court of appeals reversed trial court's award of summary judgment to nursing home and rejected

its argument that the county is not sui juris, the nursing home appeals, arguing that the county may be sued only by naming its board of commissioners as the defendant; the instant court holds that the county is not sui juris pursuant to R.C. 301.22 and 305.12 and must be sued in the name of its board of commissioners, and the cause is remanded to address the impact of that determination on the case and to determine whether to allow an amendment of the complaint or to dismiss the action.

Court documents/Access. State ex rel. Cincinnati Enquirer v. Forsthoefel | 2022-Ohio-3580 | Supreme Court of Ohio | 10/11/2022 Petition for a writ of mandamus to compel judge to vacate his order sealing documents in a dissolution case and to permit public access to the documents is granted since the judge's sealing order was overbroad and was not supported by clear and convincing evidence, and the court must use the least restrictive means available when restricting public access, Sup.R. 45(E)(3), and the court is ordered to conduct a proper review of the documents that are the subject of the sealing order to determine if any information contained within the documents is subject to exclusion, Sup.R. 44 and 45; also, petitioner's request for a writ of prohibition to prevent judge from enforcing the sealing order is granted since the writ of mandamus was granted.

Discovery/Attorney-client privilege. N.E. Monarch Constr., Inc. v. Morganti Ent., Inc. | 2022-Ohio-3551 | 8th Appellate District | 10/06/2022 In plaintiff-construction company's action against defendant-subcontractor alleging, inter alia, breach of contract, trial court erred in compelling defendant to produce email correspondence between defendant's counsel and its principal and employees since emails included comments on the case and sought legal advice from counsel, and therefore the emails were protected by the attorney-client privilege and were properly withheld by defendant.

Arbitration/Hearing. Eric Petroleum Corp. v. Ascent Resources-Utica, L.L.C. | 2022-Ohio-3619 | 7th Appellate District | 09/28/2022 In plaintiff-gas company's action against defendants-drilling companies seeking, inter alia, a declaration that defendants' assignments of its drilling rights were invalid, the trial court erred in denying

plaintiff's request for a hearing based on defendants' motion to compel arbitration and to stay the matter pending arbitration where, although a motion filed under R.C. 2711.02 does not require a hearing, plaintiff specifically requested a hearing under R.C. 2711.03, and under the plain language of the statute, the court had no authority to deny the hearing or to rule that the parties were otherwise heard.

Prejudgment attachment of property. State ex rel. Yost v. FirstEnergy Corp. | 2022-Ohio-3400 | 10th Appellate District | 09/27/2022 In plaintiff-state's action against defendants-energy companies, trial court erred in granting plaintiff's ex-parte motion for prejudgment attachment of property where plaintiff was required to show that it would suffer irreparable injury pursuant to R.C. 2715.045, but it provided no evidence that the property would be impaired substantially if attachment was delayed, and plaintiff provided no explanation for the allegation that there was a present danger of defendants' transferring or hiding assets, which would have required attachment without affording defendants notice.

Final appealable order/Mandamus/Magistrate's decision. Fipps v. Day | 2022-Ohio-3434 | 8th Appellate District | 09/27/2022 In tax certificate foreclosure action, amended petition for a writ of mandamus to compel judge to vacate an order, allegedly interlocutory because it was entered without legal authority under Civ.R. 53(D)(1)(a) and 53(D)(2)(a)(i), is dismissed where petitioner's claim that the order was invalid because it contained a "rubber stamp" of judge's signature is without merit, and also the petitioner possessed an adequate remedy at law through an appeal of the order of foreclosure.

Sua sponte determination/Governmental immunity. Cook v. Metro. Sewer Dist. of Greater Cincinnati | 2022-Ohio-3245 | 1st Appellate District | 09/16/2022 In plaintiff-property owner's action against defendant-sewer district seeking to recover for damage to property caused by sewage flooding where the trial court denied defendant's Civ.R. 12(B)(6) motion to dismiss, the court's additional sua sponte determination that defendant was not immune from liability was error since neither of the parties raised the issue of governmental immunity, the issue was not properly before the court, and the parties were deprived of the

opportunity to address it; defendant's motion to dismiss argued that it lacked legal capacity to be sued because it was a municipal subdivision.

Sanctions/Hearing/Second judge.

Uting v. Zimmer | 2022-Ohio-3248 | 10th Appellate District | 09/15/2022 In landlord's action for damages against tenant, alleging non-payment of rent and unlawful activity, where landlord also made a motion for sanctions against tenant, based on rulings by first trial judge in case on tenant's motions which landlord contends to be frivolous, second judge in the case erred in not holding a hearing prior to denying landlord's motion for sanctions since the second trial judge may not have had sufficient knowledge of the circumstances for denial of requested sanctions and attorney fees, and landlord demonstrated a triable issue with his motion, R.C. 2323.51.

Magistrate's order/Motion to set aside.

State ex rel. Concerned Ohio River Residents v. Mertz | 2022-Ohio-3211 | 10th Appellate District | 09/13/2022 In relators-residents and concerned organizations' action seeking to compel respondents-state departments to cancel drilling permits for mining wells where magistrate denied respondents' lack of standing-based Civ.R. 12(B) motion to dismiss, respondents' objections to magistrate's denial are dismissed since the denial was a magistrate's order rather than a magistrate's decision because it denied respondents' motion to dismiss and did not eliminate factual defenses, and since the magistrate issued an order rather than a decision, respondents' proper challenge was to file a motion to set aside the order pursuant to Civ.R. 53(D)(2)(b), which they did not do, and filing of objections was improper and untimely.

Relief from judgment/Clerical error.

Max, Inc. v. Mughal | 2022-Ohio-3131 | 8th Appellate District | 09/08/2022 In plaintiff-business' breach of contract action against defendant-commercial property owner for failing to pay amount due on loan note, trial court did not err in denying plaintiff's Civ.R. 60(A) motion to correct a clerical mistake with a nunc pro tunc order to reflect a higher damages award since plaintiff was not seeking to correct a clerical error in the judgment but was seeking a substantive change to the amount of damages; also,

plaintiff improperly attempted to use a Civ.R. 60(B) motion as a substitute for a direct appeal.

Appeal, Magistrate's order.

Perkins v. Perkins | 2022-Ohio-3116 | 11th Appellate District | 09/06/2022 Appeal from magistrate's order granting defendant's motion in limine is dismissed for lack of a final appealable order, R.C. 2505.02(B), where, although magistrate's orders are effective without judicial approval, they are interlocutory by nature and not directly appealable; also, generally, a trial court's decision to grant a motion in limine is an interlocutory order that is not final and appealable.

Jurisdiction/Medicaid subrogation/ Tort award.

Masters v. Ohio Dept. of Medicaid | 2022-Ohio-3075 | 2nd Appellate District | 09/02/2022 In plaintiffs-parents' action challenging the validity of defendant-department of Medicaid's subrogation rights in distribution of tort recovery award in plaintiffs' underlying medical malpractice action against physicians for child's moderate mental disability, the trial court did not err in granting defendant's motion to dismiss based on lack of subject matter jurisdiction since R.C. 5160.37 provides an exclusive administrative remedy for resolving disputes about amounts medical assistance recipients must pay the department after obtaining a tort recovery from a liable third party, and appeal to the common pleas court from the administrative decision is the proper time to raise constitutional issues.

Judgment/Magistrate's decision.

Wright v. Suttles | 2022-Ohio-2975 | 2nd Appellate District | 08/26/2022 In plaintiff's replevin action against defendant-cousin for return of trucks parked on defendant's property, judgment in favor of plaintiff is affirmed where defendant failed to show that the trial court did not conduct independent analysis of magistrate's decision in favor of plaintiff, the court acknowledged its duty to conduct independent review and did not simply rubber-stamp magistrate's decision, and defendant waived improper venue defense because he failed to raise it pursuant to Civ.R. 12(H)(1).

Appeal/Satisfaction of judgment.

B.G. Staffing, L.L.C. v. LanceSoft Inc. | 2022-Ohio-2963 | 1st Appellate District | 08/26/2022 In plaintiff-temporary staffing agency's action against defendant-business for failure to pay for services, resulting in a default judgment, defendant's appeal is dismissed as moot where defendant did not request a stay of execution of the default judgment before plaintiff filed its satisfaction of judgment, and therefore satisfaction of judgment through garnishment was considered voluntary and defendant's belated request for a stay did not negate its inaction prior to disbursement of funds to plaintiff, Civ.R. 62(A).

Attorney disqualification/Necessary witness.

Lake Royale Landowners Assn. v. Dengler | 2022-Ohio-2929 | 11th Appellate District | 08/22/2022 In plaintiff-property owners association's action against defendant-nearby property owner alleging trespass and creation of nuisance on portion of lake to which plaintiff claimed ownership, trial court erred in granting motion to disqualify plaintiff's counsel brought by intervenors-alleged owners of property in question where, although counsel was a potential witness, his testimony could be established through other witnesses and therefore he was not a necessary witness pursuant to Prof. Cond.R. 3.7.

Negligence/Discovery/Appeal.

Karr v. Salido | 2022-Ohio-2879 | 10th Appellate District | 08/18/2022 In plaintiff's negligence action against defendant-driver as the result of a vehicle accident, appeal of denial of plaintiff's motion to compel production of an insurance claim file is dismissed for lack of a final appealable order where discovery orders, which are generally interlocutory in nature, are typically not subject to immediate appeal, and although the instant case involves a trial court order denying a provisional remedy under R.C. 2505.02(B)(4), plaintiff has not demonstrated that the requirement for a final appealable order stated in R.C. 2505.02(B)(4)(b) has been met.

Mandamus/Court expenses/

Mootness. State ex rel. Grendell v. Geauga Cty. Bd. of Commrs. | 2022-Ohio-2833 | Supreme Court of Ohio | 08/17/2022 Judge's petition for a writ of mandamus to compel county board of commissioners and county prosecutor to approve judge's application for

Procedure (Continued)

appointment of counsel to commence an action to secure payment for expenses that judge authorized is dismissed as moot since judge's objective in bringing the action was effectively achieved when payment of expenses was authorized, and even if the writ to appoint counsel were granted, there would be nothing to litigate.

Service/Small claims court. McCrown v. Eichenberger | 2022-Ohio-2861 | 5th Appellate District | 08/17/2022 In small claims court action by horse trainer to recover payment for services rendered to horse owner, judgment in favor of trainer is affirmed since, inter alia, service on owner was properly completed by ordinary mail on the date the clerk sent the summons after certified mail went unclaimed because the ordinary mail envelope was not returned as undeliverable, Civ.R. 4.6(D), and the notice of the trial date accompanying the ordinary mail was within the time parameters of R.C. 1925.04; as well, judgment for the plaintiff was not a default judgment, an answer is not contemplated by the small claims statutes, R.C. 1925.01, et seq. and the 28-day answer period is inapplicable since a matter is set for trial upon initiation of a claim in small claims court.

Jurisdiction. Watson v. Rankin-Thoman, Kinman-Kindell, Co. | 2022-Ohio-2811 | 6th Appellate District | 08/12/2022 In tenant's negligence action against landlord claiming that failure to maintain plumbing resulted in damage to her personal property, the trial court erred in granting landlord's motion to dismiss for lack of subject matter jurisdiction where the landlord raised a jurisdictional argument related to personal jurisdiction rather than subject matter jurisdiction, and tenant's claim was within the authority of the trial court to adjudicate.

Frivolous conduct/Sanctions. Marcellino v. Nicastro | 2022-Ohio-2736 | 11th Appellate District | 08/08/2022 In property line dispute between neighboring horse farm owners that led to settlement agreement prohibiting contact between the parties, trial court did not err in imposing sanctions on plaintiff for filing a motion to show cause against defendant since plaintiff lacked standing because she no longer had an interest in the property bordering

defendant's property after transferring her interest to her parents, she was prohibited by court order from residing on property with equine animals, demonstrating that contentions in affidavit were knowingly false, and her conduct was egregious and objectively frivolous under R.C. 2323.51.

Summary judgment/Open Meetings Act. State ex rel. Ames v. Portage Cty. Solid Waste Mgt. Dist. Bd. of Commrs. | 2022-Ohio-2740 | 11th Appellate District | 08/08/2022 In taxpayer's declaratory, injunctive relief and mandamus action alleging that respondent-waste management board had committed numerous violations of the Open Meetings Act, summary judgment in favor of respondent was error where respondent's motion was granted prior to expiration of the response deadline under Civ.R. 6(C)(1), and therefore taxpayer was not allowed time to file a full and fair response.

Judge disqualification. In re Disqualification of Ondrey | 2022-Ohio-3204 | Supreme Court of Ohio | 08/05/2022 Affidavit of disqualification filed by affiant-party in underlying case is denied where, inter alia, judge's issuance of an entry during the pendency of the disqualification proceeding was not evidence of bias since the judge prepared the entry prior to the date on which affiant filed the affidavit, before judge was aware that affiant had filed his affidavit, and due to inadvertence and staffing issues, the clerk's office did not file the judge's entry until a few days after affiant had filed his affidavit; also, a judge's adverse rulings, without more, are not evidence that a judge is biased or prejudiced, R.C. 2701.03.

Professional Responsibility

Suspension. Cleveland Metro. Bar Assn. v. Brooks | 2022-Ohio-3712 | Supreme Court of Ohio | 10/20/2022 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Sharp | 2022-Ohio-3702 | Supreme Court of Ohio | 10/19/2022 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Carr | 2022-Ohio-3633 | Supreme Court of Ohio | 10/18/2022 Attorney is indefinitely suspended from the practice of law and from judicial office, with reinstatement on conditions.

Reprimand. Disciplinary Counsel v. Lemons | 2022-Ohio-3625 | Supreme Court of Ohio | 10/13/2022 Judge is issued a public reprimand.

Suspension. In re Fusco | 2022-Ohio-3300 | Supreme Court of Ohio | 09/21/2022 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Suspension. Stark Cty. Bar Assn. v. Arkow | 2022-Ohio-3209 | Supreme Court of Ohio | 09/15/2022 Attorney is suspended from the practice of law for two years, with the second year stayed on conditions, and upon reinstatement is required to serve one year of monitored probation.

Suspension. Disciplinary Counsel v. Jancura | 2022-Ohio-3189 | Supreme Court of Ohio | 09/14/2022 Attorney is suspended from the practice of law for two years, with one year stayed on conditions.

Application for admission to bar. In re Application of Richmond | 2022-Ohio-3169 | Supreme Court of Ohio | 09/13/2022 Applicant's application to register as a candidate for admission to the Ohio bar and to take the 2021 bar exam was disapproved, and applicant is permitted to reapply to register as a candidate for admission to the practice of law in Ohio no earlier than March 2025.

Reinstatement. Cleveland Metro. Bar Assn. v. Whipple | 2022-Ohio-3173 | Supreme Court of Ohio | 09/12/2022 Attorney is reinstated to the practice of law.

Suspension. Disciplinary Counsel v. Fitz | 2022-Ohio-3108 | Supreme Court of Ohio | 09/08/2022 Attorney is suspended from the practice of law for two years, with reinstatement on conditions.

Resignation. In re Resignation of Owens | 2022-Ohio-3069 | Supreme Court of Ohio | 09/02/2022 Attorney resigned from the practice of law with disciplinary action pending.

Resignation. In re Resignation of Feltis | 2022-Ohio-3063 | Supreme Court of Ohio | 09/02/2022 Attorney resigned from the practice of law with disciplinary action pending.

Suspension. Disciplinary Counsel v. Vick | 2022-Ohio-2967 | Supreme Court of Ohio | 08/26/2022 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

Suspension. Disciplinary Counsel v. Moody | 2022-Ohio-2966 | Supreme Court of Ohio | 08/26/2022 Attorney is issued an interim suspension from the practice of law, with reinstatement on conditions.

Suspension. In re Nolan | 2022-Ohio-2951 | Supreme Court of Ohio | 08/25/2022 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

Resignation. In re Resignation of Salmen | 2022-Ohio-2713 | Supreme Court of Ohio | 08/08/2022 Attorney resigned from the practice of law with disciplinary action pending.

Reinstatement. In re Continuing Legal Edn. Suspension of Gedeon | 2022-Ohio-2639 | Supreme Court of Ohio | 08/03/2022 Attorney is reinstated to the practice of law.

Public and Public Finance

Public records/Law enforcement records. State ex rel. Standifer v. Cleveland | 2022-Ohio-3711 | Supreme Court of Ohio | 10/20/2022 Denial of public records requester's petition for a writ of mandamus to compel respondent-city to provide police use of force reports is reversed where the court of appeals relied on R.C. 149.43(A)(2)(a), which exempts from disclosure confidential law-enforcement investigatory records (CLEIR) that would have a high probability of revealing the identity of a suspect who has not yet been charged with the offense to which the record pertains; however, the characterization of an officer who used force as a "suspect" is questionable, given that the use of force report is submitted prior to any determination that a use of force merits an administrative or criminal inquiry, so the case is remanded to the court of appeals for further proceedings.

Public records/Existence/Damages. State ex rel. Harris v. Rose | 2022-Ohio-3729 | 5th Appellate District | 10/19/2022 Relator-inmate's petition for a writ of mandamus to compel respondent-prison official to produce video footage showing that his personal property was damaged while in prison vault is granted in part, where, although some requested records no longer exist or never existed, one request was timely transmitted by electronic submission under R.C. 149.43(C)(2) and the requested footage should have been available, so relator is entitled to statutory damages pursuant to R.C. 149.43(B).

Public records. State ex rel. Huth v. Animal Welfare League of Trumbull Cty., Inc. | 2022-Ohio-3583 | Supreme Court of Ohio | 10/11/2022 Public records requester's petition for a writ of mandamus to compel respondent to provide all criminal complaints filed in any court by humane agents/officers employed by respondent and to inform requester how respondent's records can be accessed is denied since the request related to criminal complaints is overbroad, the Public Records Act does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies, requester did not respond to directions on how to narrow her request, and R.C. 149.43(B)(2) does not require public offices to offer tutorials on how their software systems work; also, requester is not awarded attorney fees, statutory damages, or court costs, R.C. 149.43.

Public records/Records of inmates. State ex rel. McCarley v. Dept. of Rehab. & Corr. | 2022-Ohio-3397 | 10th Appellate District | 09/27/2022 Inmate's petition for a writ of mandamus to compel state department to furnish unredacted copies of documents requested by inmate that previously had been redacted or withheld is granted since the records were withheld based on the exception in R.C. 5120.21(F) which provides that records of inmates shall not be considered public records as defined in R.C. 149.43; however, this exception does not apply to situations in which the requestor is an inmate and the records sought relate to the requestor himself.

Public records/Police incident report. Brandt v. Solon Police Dept. | 2022-Ohio-3732 | Court of Claims | 09/27/2022 In action claiming denial of access to public records, including videos, photos, victim statements and witness statements, related to a police incident/offense report where respondent provided redacted copies of the first nine pages of the report along with an explanation for redactions, special master recommends that the court issue an order granting the claim for production of records, which the special master lists in a detailed table of the records addressing the issue of the public records exemption for specific investigatory work product under R.C. 149.43(A)(1)(h) and (A)(2)(c).

Public records/Newsletter mailing list/Objections. Hicks v. Union Twp., Clermont Cty. Trustees | 2022-Ohio-3558 | Court of Claims | 09/13/2022 In requester's action seeking to compel respondent-township to provide mailing lists used for township newsletter, requester's objections to special master's recommendation to deny the claim are overruled since the mailing lists do not constitute a public record where, inter alia, they are not a written record of the structure, duties, agency determinations, or other acts of the township within the meaning of R.C. 149.011(G); as well, requester's objections do not comply with R.C. 2743.75(F)(2)'s procedural requirements since requester failed to serve a copy of his objections by certified mail, return receipt requested, as required by R.C. 2743.75(F)(2).

Public records/Existence of records/Attorney fees. State ex rel. Stevenson v. King | 2022-Ohio-3093 | Supreme Court of Ohio | 09/07/2022 In requester-city council president's petition for writ of mandamus to compel city director of finance to provide all financial records that involved the expenditure of CARES Act grants, the court of appeals did not err in granting the writ since, inter alia, the court rejected respondents' suggestion that responsive records did not exist where respondents conceded that grants were awarded, but presented no evidence that the grants were awarded based on anything other than written applications, and further, respondents' exhibits were unauthenticated; however, the award to requester of attorney fees is reversed on reasoning that there was no attorney-client relationship or a fee agreement between the attorney who

Public and Public Finance (Continued)

worked on the case and requester or city council, R.C. 149.43(C)(3)(b).

Public records/Damages/Attorney fees. State ex rel. Cleveland Assn. of Rescue Emps. v. Cleveland | 2022-Ohio-3043 | 8th Appellate District | 08/30/2022 In relator-union's action seeking to compel respondents-city and records administrator to release emails of certain city employees relating to data breach, relator's motion for summary judgment on issues of damages and attorney fees is granted since relator's initial request was reasonable and stated with clarity what records were requested; respondents acted in bad faith in refusing to accept certified mail from relator and the court, even though the addressees no longer held the positions listed in the addresses, because the source of the letter demanded that it be accepted, so requester is entitled to damages and fees pursuant to R.C. 149.43(C).

Open Meetings Act/Board of revision. State ex rel. Ames v. Portage Cty. Bd. of Revision | 2022-Ohio-3003 | 11th Appellate District | 08/29/2022 In relator's mandamus and related claims action asserting that the board of revision violated the Open Meetings Act by violating R.C. 5715.02 when it permitted an individual who was not yet a member of the board to participate in a meeting by making motions, seconds and voting, the trial court did not err in granting summary judgment to respondent since there is no authority supporting the proposition that a violation of R.C. 5715.02 necessarily results in a violation of the Open Meetings Act.

Public Utilities

Wind powered facility/Environmental considerations/Public trust. In re Application of Icebreaker Windpower, Inc. | 2022-Ohio-2742 | Supreme Court of Ohio | 08/10/2022 Approval of application for a certificate of environmental compatibility and public need for applicant to build a six-turbine wind-powered electric-generation facility is affirmed since the power siting board did consider whether the project represented the minimum adverse environmental impact under R.C. 4906.10(A)(3) where, inter alia, the board found that applicant's moving the project further away from shore and the small scale of the project

minimized several potential adverse environmental impacts on wildlife and applicant also employed specific measures designed to minimize the adverse environmental impact on birds and bats at the site; also, the board did not err in determining that it lacked jurisdiction to consider the residents' public-trust argument since the board's authority under R.C. 4906.10(A)(6) does not extend to the power to make public-trust determinations.

Real Property

Gift/Deed restrictions/Marketable Title Act. Cleveland Botanical Garden v. Worthington Drewien | 2022-Ohio-3706 | Supreme Court of Ohio | 10/20/2022 In plaintiff-garden's action to declare that its use of property was consistent with restrictions in the deed of gift of the property to city for a park, the court of appeals did not err in affirming trial court's summary judgment to plaintiff on issues of charging fees and having specific hours of operation since the deed restrictions did not mean that a fee could not be charged for access to the park or that it had to be open at all times, and donor's language of transfer and R.C. 755.19 do not transform a deed of gift into a trust, with heightened fiduciary duties; also, interests appearing in the root of title itself, such as the heirs' reversionary interest in the park by virtue of the deed, cannot be extinguished under the Marketable Title Act.

Foreclosure/Double dismissal. PNC Bank, Natl. Assn. v. Seward | 2022-Ohio-3692 | 12th Appellate District | 10/17/2022 After bank dismissed two previous foreclosure complaints, Civ.R. 41(A), against homeowner, alleging that homeowner's loan was in default, summary judgment in favor of bank was not error where, although res judicata would apply to bar third foreclosure complaint under the double-dismissal rule of Civ.R. 41(A)(1)(a) if all three complaints arose from the same operative facts, the bank reinstated homeowner's loan twice before filing the instant action and the previous foreclosure complaints involved different principal amounts and different default dates, so the instant action did not arise from the same operative facts as the previous complaints.

Foreclosure/Notice/Relief from judgment. LNV Corp. v. Kempffer | 2022-Ohio-3480 | 11th Appellate District | 09/30/2022 In loan assignee's foreclosure action against borrowers-property owners for default on loan, resulting in judgment for assignee, trial court did not err in denying borrowers' Civ.R. 60(B)(5) motion to vacate judgment without a hearing where assignee's failure to provide both borrowers with written notice prior to acceleration of the loan did not affect the validity of the notice because the mortgage provided that notice to one borrower constituted notice to all borrowers, and because the materials submitted by borrowers failed to demonstrate that relief might be warranted, no hearing was required.

Easement. Vaccaro v. Borgione | 2022-Ohio-3473 | 9th Appellate District | 09/30/2022 In plaintiffs-property owners' action seeking a boundary survey and to quiet title to property encroached upon by defendants' driveway, judgment in favor of defendants was not error where defendants demonstrated an implied easement by prior use because they had used the driveway for decades and their use predated and postdated the severance of the original estate that created plaintiffs' property, decreasing the size of the driveway to excise the portion that crossed onto plaintiffs' property would create a safety issue, and the footprint of driveway did not change when resurfaced.

Land contract/Part performance. Hamilton v. Barth | 2022-Ohio-3451 | 1st Appellate District | 09/30/2022 In plaintiff's action to enforce a land contract, trial court did not err in granting defendants' motion for summary judgment where the agreement was invalid under R.C. 5313.02 because it was not notarized, the defendants never delivered possession of the land to plaintiff, plaintiff's initial deposit was returned to him, and there was no evidence of part performance by plaintiff showing that he changed his position to his detriment in reliance on the contract, so the equitable doctrine of part performance does not apply.

Sale/Fraud/Maintenance code.

Rainy Day Rentals, Inc. v. Next Gen. Properties, Inc. | 2022-Ohio-3530 | 7th Appellate District | 09/30/2022 In property purchaser's action against sellers, alleging that they fraudulently induced purchase agreement by failing to disclose that a structure on the property was subject to a raze or repair order, judgment in favor of sellers was not error where purchaser had the opportunity to learn about the demolition order and failed to do so, and although sellers failed to comply with city property maintenance code, the parties' contract was not void, even though it was in contravention of a code provision, since it was not contrary to an established interest of society or norm.

Tenant/Security deposit/Attorney fees.

Levine v. Kellogg | 2022-Ohio-3440 | 10th Appellate District | 09/29/2022 In action by tenant against landlord to recover security deposit where trial court's ruling in favor of tenant is affirmed, the trial court did err regarding award of attorney fees to tenant where the award was sufficiently disproportionate to the damages to raise the issue of reasonableness under R.C. 5321.16(C); while the trial court identified the Prof.Cond.R. 1.5 factors, it failed to address which, if any, it applied, and the trial court should have provided a more detailed explanation of how it arrived at the amount of the attorney fee award and how that figure was reasonable in light of the disproportionality between the total damages and attorney fees.

Easement by estoppel/Agricultural drain tile.

Helfrich v. Foor Family Invests., L.L.C. | 2022-Ohio-3446 | 5th Appellate District | 09/29/2022 In plaintiff-property owner's action for damage to his property from water flow from defendant-neighbor's property where defendant filed a counterclaim seeking to establish an easement, resulting in a finding of an easement by estoppel, denial of plaintiff's motion for a directed verdict on defendant's counterclaim is affirmed since defendant provided evidence of the maintenance of drain tile on plaintiff's property for many years, the existence of the drain tile was known to previous owners of both parcels of land, and plaintiff was very familiar with the agriculture use and installation of drain tile and was aware of the tile serving defendant's property.

Fair Housing Act/Pre-emption.

Epcon Community Franchising, L.L.C. v. Wilcox Dev. Group, L.L.C. | 2022-Ohio-3442 | 10th Appellate District | 09/29/2022 In action by franchisor of community development residential homes against developer-contractor with franchisor seeking contribution under R.C. 2307.25(A) after franchisor was assessed damages for violating the Fair Housing Act (FHA) accessibility requirements, trial court did not err in dismissing the action on reasoning that the FHA pre-empted the state contribution action since the claim for contribution is an obstacle to the full purposes and objectives of Congress in the passage of the FHA because it circumvents the judgment of the federal government in choosing who to prosecute for violations of the FHA, and it permits a violator to shift at least some of the responsibility for the FHA violation to another party.

Eviction/Counterclaims. FAP Properties

XL, L.L.C. v. Griffin | 2022-Ohio-3410 | 1st Appellate District | 09/28/2022 In landlord's forcible entry and detainer action against tenants for violating the parties' lease agreement by failing to cease operation of collision repair business, trial court did not err in dismissing individual tenant's counterclaim of fraud since the lease was unambiguous and tenant was not excused for inadvertently overlooking its terms, and tenant's counterclaim for defamation fails because landlord's allegations were against the business, rather than the tenant individually, and allegations contained within the complaint are privileged.

Adverse possession/Mineral rights

lease. Cottrill v. Quarry Ents., L.L.C. | 2022-Ohio-3396 | 5th Appellate District | 09/27/2022 In plaintiff-property owner's action against defendant-mineral rights owner requesting the court to issue a declaratory judgment of adverse possession and to quiet title to property, summary judgment in favor of defendant was not error where, even if defendant did not physically occupy the surface of the disputed property, the gas company had the right of possession due to its lease of mineral rights, and plaintiff's alleged possession was never exclusive, one of the key elements to establish adverse possession, so therefore a finding of adverse possession is precluded.

Foreclosure/Allonge/Standing.

Yemma v. Leber Real Estate, Ltd. | 2022-Ohio-3289 | 7th Appellate District | 09/16/2022 In county's foreclosure action against property owner based on a tax lien on property, trial court did not err in denying appellant-claimed note holder's motion for summary judgment since appellant was not the holder of the note where, although the affidavit of appellant's president asserted that the note was in appellant's possession, the note does not contain an indorsement to appellant, no allonge is affixed to the note, and there was no evidence that it had been attached, so appellant lacks standing to enforce the note.

Lien priority/Release/Reinstatement.

Kemba Fin. Credit Union v. Jackson on High Condominium Assn. | 2022-Ohio-3247 | 10th Appellate District | 09/15/2022 In plaintiff-credit union mortgagee's action against defendant-second lien holder on property seeking a declaratory judgment that plaintiff's release of interest in property was void and that its mortgage be judicially reinstated, the trial court erred in reinstating plaintiff's first priority lien status since the record contains plaintiff's written, signed, notarized and recorded release of its mortgage with no explanation for its effort to reinstate the mortgage other than that the release was a mistake, defendant would be harmed by reinstatement of plaintiff's lien position, and equitable principles argued by plaintiff cannot override the clear language of R.C. 5301.23 and 5301.28 to try to reinstate its position.

Adverse possession.

Gallaher v. Gelske | 2022-Ohio-3097 | 3rd Appellate District | 09/06/2022 In plaintiffs-property owners' adverse possession action seeking to quiet title and for injunctive relief against defendants-neighbors, summary judgment in favor of defendants was not error since plaintiffs could not prove adverse use where the previous owner of defendants' neighboring property permitted plaintiff-husband's parents, who were previous owners of plaintiffs' property, to use a small area of the disputed property to curb weeds on their own property, so the parents' use of the property was permissive.

Real Property (Continued)

Dam repair/Cost sharing. State ex rel. Yost v. Settlers Walk Home Owners Assn. | 2022-Ohio-3106 | 12th Appellate District | 09/06/2022 In state's action against land owner and neighboring property's homeowners association, seeking to remedy safety violations for dam which borders both properties, trial court erred in granting summary judgment in favor of land owner on its cross-claim against association for indemnification of costs to remedy the dam's safety violations since the parties are jointly required to remedy dam's safety violations where the land owner is not a party to association's covenants with its members regarding maintenance of the dam and is not an intended beneficiary with standing to enforce the covenants.

Lease breach/Damages/Deposit. Sola Professional Group, L.L.C. v. Mallek | 2022-Ohio-3041 | 8th Appellate District | 09/01/2022 In plaintiff-commercial landlord's breach of contract action against defendant-studio space tenant for not paying the full amount due after she vacated the space but left behind some personal property, resulting in award of damages to plaintiff, the trial court erred in its calculation of damages by failing to account for plaintiff's obligation to refund defendant the amount of her "damage deposit" where defendant advised plaintiff that she wanted to terminate the lease, plaintiff notified her that the space was re-rented, and defendant paid rent through the date of the new rental.

Tax foreclosure/Confirmation of sale. Tax Ease Ohio, L.L.C. v. Harivel Agency, L.L.C. | 2022-Ohio-3042 | 8th Appellate District | 09/01/2022 In plaintiff-tax certificate holder's foreclosure action, resulting in order for the foreclosure to proceed according to R.C. Ch. 5721.30, et seq., trial court erred in subsequently vacating the confirmation entry and returning funds to third-party purchaser where, although plaintiff's affidavit claimed that defendant provided funds in the amount necessary to redeem the tax certificate held against the property, plaintiff did not withdraw its motion to confirm sale due to defendant's redemption, and the parties did not comply with the requirements of R.C. 5721.25 to tender to the treasurer an amount sufficient to cover the delinquency prior to entry of confirmation.

Fixture/Art display. Found. Medici v. Butler Inst. of Am. Art | 2022-Ohio-2923 | 11th Appellate District | 08/22/2022 In property owner's action against art museum seeking a declaration that art installed on leased property was a permanent fixture and may not be removed on owner's early termination of lease, summary judgment in favor of museum was not error where, although the addition built to display the art will remain with the property, the art itself is not a fixture under elements of Teaff because it was affixed to a removable frame for display, it can be moved and displayed at other locations, and museum did not intend to relinquish ownership of the art.

Civil action for theft/Damages. Dancybey v. Dancy-Dunlap | 2022-Ohio-2774 | 8th Appellate District | 08/11/2022 In plaintiff-grandfather's action against defendant-granddaughter seeking to quiet title to home for which there is evidence that defendant obtained title through theft of an unrecorded quitclaim deed, trial court erred in declining to award plaintiff treble damages, despite granting plaintiff's motion for summary judgment on his claim under R.C. 2307.61 that involved a theft offense, since plaintiff had the right to elect treble damages under R.C. 2307.61(A)(1) (b), and the court did not have authority to decline plaintiff's chosen remedy.

Eviction/Local rule conflict. Shaker House, L.L.C. v. Daniel | 2022-Ohio-2778 | 8th Appellate District | 08/11/2022 In landlord's forcible entry and detainer action against tenant, claiming failure to pay rent, trial court erred in dismissing claim where, although local rule required landlord to attach affidavit of lead certification status as precondition to eviction, the rule is invalid because it conflicts with landlord's substantive rights under R.C. 1923.15, and the statute does not give the housing court authority to prevent eviction.

Tax foreclosure/Excess funds/Estate. Cuyahoga Cty. Treasurer v. Heirs of Weisner | 2022-Ohio-2668 | 8th Appellate District | 08/04/2022 In county treasurer's foreclosure action against heirs of property owner to recover delinquent taxes, trial court did not err in denying bank-mortgagee's motion to distribute excess funds and in awarding funds to property owner's estate where, although the bank was owed funds on an equity reserve agreement, the bank's interest in the property was extinguished because the

foreclosure action concluded before the bank asserted an interest, and the bank is barred from making a claim against estate because it failed to timely present claim after death of property owner, R.C. 2117.06.

Taxation

Real property/Tax value/Assets purchase. Louisville City School Dist. Bd. of Edn. v. Groffre Invests. | 2022-Ohio-3492 | 5th Appellate District | 09/28/2022 In taxpayer's action seeking valuation of properties, trial court did not err in overturning the decision of the board of revision and lowering the tax value where the taxpayer rebutted the presumption that the conveyance of the property closest to the tax lien date was an arm's-length transaction by showing that the conveyance was part of a purchase of all of company's assets in the state, with a blanket price for all the assets, the fee statement was a property evaluation for the sole purpose of paying conveyance tax on the property, and the subsequent sale price of the property was based on its marketability as well as environmental contamination and testing requirements and therefore was the appropriate value.

Torts

Legal malpractice/Criminal sentence. Edwards v. Kelley | 2022-Ohio-3735 | 8th Appellate District | 10/20/2022 In client's legal malpractice action against counsel in underlying criminal action for failure to object to trial court's sentence for theft, imposed after client violated community control, summary judgment in favor of counsel was not error since client's repeated violations of the terms of community-control supervision were non-technical in nature, her sentence was not subject to the time limitation under former R.C. 2929.15, and therefore counsel had no duty to object to plaintiff's sentence.

Abuse of process/Immunity. Gemperline v. Franano | 2022-Ohio-3727 | 5th Appellate District | 10/18/2022 In plaintiff-township trustee's abuse of process action against defendants-citizens, prompted by their filing of a complaint pursuant to R.C. 3.07 and 3.08 to remove plaintiff from office, later voluntarily dismissed via stipulation, alleging that plaintiff engaged in misconduct by trying to replace township EMS services with county EMS services, the trial court did not err in

granting defendants' motion to dismiss plaintiff's abuse of process complaint where the Noerr-Pennington doctrine applied to provide immunity from liability for bringing the removal action, and the doctrine's sham litigation exception did not apply because the removal action was initiated with probable cause, Civ.R. 12(B)(6).

Immunity/Physical defect. Nonprasisit v. Ohio Teaching Family Assn. | 2022-Ohio-3685 | 6th Appellate District | 10/14/2022 In executor's negligence action against, inter alia, recreation district, arising from death of young swimmer at district's quarry, the trial court erred in denying district's governmental immunity-based motion for summary judgment where other defendant-teaching association's argument that the location of lifeguard stations constituted a physical defect exception to district's immunity under R.C. 2744.02(B)(4) is of no avail since the location of the stations was not a physical defect, defendant actually argues that there was improper lifeguard staffing, and there is no evidence of a physical defect in the quarry.

Trip and fall/Duty of care/Summary judgment. Yoak v. Univ. Hosps. Health Sys., Inc. | 2022-Ohio-3550 | 8th Appellate District | 10/06/2022 In plaintiff's trip and fall common law negligence action against defendant-rehab center for injuries sustained when he tripped over a board placed between glass doors to prevent doors from shutting, trial court erred in granting defendant's motion for summary judgment since actors engaging in conduct that creates a risk to others have a duty to exercise reasonable care to avoid causing physical harm and questions remain regarding whether conflicting evidence as to the size of the board placed in the door showed that defendant breached its duty of care and whether plaintiff was negligent in failing to protect himself from the obvious hazard.

Medical malpractice/Discovery/Peer review. Triplett v. Univ. Hosps. Cleveland Med. Ctr. | 2022-Ohio-3553 | 8th Appellate District | 10/06/2022 In plaintiff's medical malpractice action against defendant-hospital, alleging negligent postpartum care of wife which led to her death, trial court erred in compelling defendant to produce training modules used by defendant's care providers where defendant's

quality assurance committee that used the training modules constituted a peer review committee, R.C. 2305.25(E), and the training modules were within the scope of the peer review committee and not subject to discovery under R.C. 2305.252(A) because the modules were used solely as a tool by the committee.

Legal malpractice/Collateral estoppel. Chuparkoff v. Migdal | 2022-Ohio-3474 | 9th Appellate District | 09/30/2022 In plaintiff's legal malpractice action against defendant-former counsel in underlying criminal case in which plaintiff entered a guilty plea, trial court did not err in granting defendant's motion for summary judgment where the competence of defendant's representation of the plaintiff was previously determined during plaintiff's post-conviction relief action, and plaintiff is precluded under collateral estoppel from relitigating those issues in legal malpractice action.

Wrongful death/Damages. Masterson v. Brody | 2022-Ohio-3430 | 8th Appellate District | 09/29/2022 In victim's estate's wrongful death action against defendant, who was present at an incident in which victim was killed and co-defendant was convicted of involuntary manslaughter, resulting in a judgment against defendant for substantial compensatory damages, trial court did not err in denying defendant's motion for a directed verdict since defendant had a duty to exercise reasonable care toward victim and mitigate his injuries, such as seeking medical attention for him once he was aware of the gravity of victim's injuries; also, the court's reduction of punitive damages judgment against defendant to zero was not error on reasoning that when a defendant establishes his net worth at the time a tort is committed is zero, R.C. 2315.21(D)(2)(b) requires the trial court to reduce the punitive damages to zero.

Wrongful death/Recovery bar/Criminal conduct. Masterson v. Brody | 2022-Ohio-3429 | 8th Appellate District | 09/29/2022 In victim's estate's wrongful death action against defendant, who was convicted of involuntary manslaughter, the trial court did not err in denying defendant's motion for a jury instruction that plaintiff's recovery should be barred because he committed a criminal act that was the proximate cause of the injury for which the he sought relief, pursuant to R.C. 2307.60(B)(2), where defendant's

assertion that, inter alia, the victim became aggressive after drinking was insufficient evidence to show that the victim's conduct, even if the testimony was found credible, constituted an offense of violence that was the proximate cause of victim's death.

Defamation/Counterclaims/Public figure. Ackison v. Gergley | 2022-Ohio-3490 | 5th Appellate District | 09/29/2022 In plaintiff-political candidate's action against defendant-owner of political consulting firm alleging, inter alia, defamation, where defendant filed defamation and related counterclaims, trial court erred in granting a directed verdict to plaintiff on the counterclaims on reasoning that defendant was a limited purpose public figure and in applying the actual malice standard to his counterclaims where, although defendant previously ran for public office, the current controversy arose from plaintiff's postings on social media and did not exist prior to her posts, and media relative to defendant's prior campaign did not create the current controversy, so defendant was not a limited purpose public figure in current dispute.

Negligence/Damages. McQueen v. Amazon | 2022-Ohio-3491 | 5th Appellate District | 09/28/2022 In plaintiffs-homeowners' negligence action against defendant-online retailer for plaintiff's injuries sustained when plaintiff was hit by light fixture dislodged by defendant's delivery workers, resulting in a default judgment for plaintiffs, at damages hearing the trial court erred in awarding plaintiffs zero damages since medical bills are prima facie evidence of the reasonable value of charges for medical services pursuant to R.C. 2317.421, defendant failed to object to hearsay testimony regarding damages, and once the right to damages has been established, the right cannot be denied on reasoning that damages are incapable of being calculated with certainty.

Wrongful death. In re Estate of Goins v. YMCA of Cent. Ohio | 2022-Ohio-3404 | 10th Appellate District | 09/27/2022 In plaintiff-estate's wrongful death action against defendant-shelter facility, alleging negligent conduct leading to decedent's death occurring after decedent was expelled from the facility for a rules infraction, where decedent had signed a liability release regarding any injury he might sustain at the shelter or on its grounds, the trial court

Torts (Continued)

erred in granting summary judgment to defendant since the questions remained whether decedent's body was found on defendant's grounds and whether the release applied; also, it was error for the court to rule that defendant owed no duty to decedent after he was expelled from the facility since defendant did not make that argument when it filed its summary judgment motion, and even if it had raised the issue, the existence of a legal duty is a question of law for the court to determine.

Negligence/Medical statute of repose.

Napier v. TriHealth, Inc. | 2022-Ohio-3311 | 1st Appellate District | 09/21/2022

In plaintiff-estate executor's wrongful death and negligence action against defendants-medical services providers for decedent's exposure to bacteria during surgery which ostensibly caused his death, trial court erred in granting defendants' motion to dismiss on reasoning that the claims were barred by the medical-claim statute of repose, R.C. 2305.113, and for plaintiff's failure to file an affidavit of merit, Civ.R. 10(D)(2), since the question remains as to what the equipment which caused exposure was being used for and whether it was incidental to decedent's medical care, and therefore it was not clear on the face of the complaint that the claims were medical claims.

Negligence/Scope of employment.

Landers v. Ohio Dept. of Rehab. & Corr. | 2022-Ohio-3380 | Court of Claims | 09/16/2022 In plaintiff's negligence action against defendant-state department and corrections officers, arising from force used by employees where defendant objects to magistrate's recommendation that two of the employees acted within the scope of their employment and were entitled to civil immunity, the court sustains defendant's objection regarding one of the employees since, while corrections officers act within the scope of their employment when they come to the aid of another officer in accordance with Ohio Adm. Code 5120-9-01(C)(2)(c), the evidence demonstrates that one of the officers acted in a wanton or reckless manner when doing so, R.C. 9.86 and 2743.02(F).

Conversion/Damages. Dye v. J.J.

Detweiler Ents., Inc. | 2022-Ohio-3250 | 5th Appellate District | 09/15/2022 In plaintiffs-warehouse renters' breach of contract action against defendant-warehouse owner's estate regarding ownership rights of disputed stored property, trial court erred in finding that damages could be established with reasonable certainty where neither party produced a list specifying the property claimed to be converted by defendant, evidence presented was based on an examination of a small sample of unseized property, and no evidence was presented to corroborate the amount, contents and condition of the property.

Slip and fall/Immunity. Nadrowski

v. Cleveland | 2022-Ohio-3232 | 8th Appellate District | 09/15/2022 In plaintiff's slip and fall negligence action against defendant-city for injuries sustained when she tripped on uneven pavement and fell while crossing street, summary judgment in favor of defendant was not error where defendant had immunity pursuant to R.C. 2744.02(A)(1), and the exception to immunity under R.C. 2744.02(B)(3) did not apply because the two-inch rule does not apply to public roadways, plaintiff could not clearly identify where she fell or what caused her to fall, and evidence demonstrated that street inspection just prior to incident did not expose elevation difference.

Medical malpractice/Immunity/Dual

status. White v. Youngstown State Univ. | 2022-Ohio-3383 | Court of Claims | 08/31/2022 In medical malpractice action against physician who served as medical director of state university's paramedic program, arising from death of a patient whom physician was treating, magistrate recommends that the physician should not be entitled to governmental immunity under R.C. 9.86 and that courts of common pleas should have jurisdiction over civil actions against the physician since a health-care practitioner who has dual status as a private practitioner and as an employee of a state medical institution is potentially immune from liability for medical malpractice only when he or she is performing duties for the state, and in the instant situation, the physician's care was not performed in furtherance of the interests of the state university's paramedic program where no paramedic student was present with the physician at the time he provided care to the patient.

Property damage/Insurance/

Damages. Lake Breeze Condominium Homeowners' Assn. v. Eastlake Ohio Developers, L.L.C. | 2022-Ohio-3002 | 11th Appellate District | 08/29/2022 In plaintiff-condominium owners' association's action against defendant-developer seeking full compensation for damage to common areas during construction on adjacent land, the trial court erred in awarding plaintiff damages for recoverable depreciation of damaged grates since plaintiff already recovered the damages from its insurer and awarding plaintiff more than its deductible amount goes beyond making the plaintiff whole and could result in double recovery.

Tortious interference/Declaratory judgment/Standing. Honeywell

Internat., Inc. v. Vanderlande Industries, Inc. | 2022-Ohio-2986 | 12th Appellate District | 08/29/2022 In plaintiff-business' action against defendant-competitor, alleging tortious interference in employee contracts with former employees which precluded soliciting employment elsewhere, where defendant filed counterclaims seeking a declaratory judgment that would invalidate the employee contracts, trial court did not err in finding that defendant lacked standing to assert the counterclaims since, although defendant was interested in plaintiff's contracts with employees, it was not an interested party under the Declaratory Judgment Act pursuant to R.C. 2721.03.

Medical malpractice/Expert testimony.

Ferrell v. Ohio State Univ. Med. Ctr. | 2022-Ohio-2937 | 10th Appellate District | 08/23/2022 In plaintiff's medical malpractice action against defendant-university, alleging negligent delivery of child, judgment for defendant was error since there is no reference in the trial court's decision to the testimony of plaintiff's key witness, and plaintiff's due process rights were violated by the court by overlooking her expert testimony in determining defendant's liability; the trial court may have intentionally disregarded certain opinions of the expert witness because they were undisclosed during discovery, but the court did not mention the remainder of expert's testimony.

Conversion. Barnosky v. Barnosky | 2022-Ohio-2928 | 11th Appellate District | 08/22/2022 In plaintiff's conversion action against defendant-brother for failure to surrender personal property stored on father's farm, judgment in

favor of plaintiff was not error where defendant exercised wrongful dominion over plaintiff's property by excluding him from accessing it, defendant did not dispute existence of the property or plaintiff's ownership of it, and defendant failed to object to plaintiff's testimony regarding the value of the property.

Evidence/Non-testifying expert's report. Haile v. Detmer Sons, Inc. | 2022-Ohio-2891 | 2nd Appellate District | 08/19/2022 In plaintiff-son's wrongful death action against defendant-furnace company, claiming that faulty service to furnace led to death of mother, trial court erred in granting defendant's motion to compel production of consulting expert's work product where Civ.R. 26(B)(7)(h) protects discovery of non-testifying expert's work product absent exceptional circumstances, and neither party requested an in camera review of report or an evidentiary hearing to address whether exceptional circumstances warranted production of materials.

Medical malpractice/Expert testimony. Michalek v. OSU Wexner Med. Ctr. | 2022-Ohio-3378 | Court of Claims | 08/17/2022 In plaintiff-estate's medical malpractice and related claims action against defendant-medical center, seeking damages for complications and death that occurred in treatment of decedent, judgment is rendered for defendant where the detailed opinions of defendant's experts, that included an explanation about the administration of a specific drug, were persuasive, development of a plan for decedent's care was appropriate under defendant's residency program, and even though physician's failure to supervise decedent's case was negligent, his negligence was not the proximate cause of her death.

Wrongful death/Discovery/Sanctions. Garrett v. Cuyahoga Cty. | 2022-Ohio-2770 | 8th Appellate District | 08/11/2022 In estate administrator's wrongful death action against, inter alia, daycare owner for failure to report suspicions of child neglect and abuse of deceased child, the trial court did not err in granting default judgment as a sanction for owner's contempt of discovery orders since owner failed to engage in the litigation, ignored case scheduling timelines to which she had stipulated, willfully disregarded discovery requests and court orders, and had a reasonable opportunity to defend against dismissal, Civ.R. 37(B).

Negligence/Fellow employee immunity. Gundel v. Whalen Lawn & Landscaping, L.L.C. | 2022-Ohio-2763 | 5th Appellate District | 08/10/2022 In plaintiff-employee's action against defendant-insured company's owner, alleging negligence in the maintenance of a lawnmower which led to plaintiff's injuries, prompting defendant's insurer to also file an action to declare that it did not owe a defense or indemnification to defendant, summary judgment in favor of insurer was not error where defendant-owner was also an employee of the company pursuant to R.C. 4123.01(A), he had immunity as a fellow employee under R.C. 4123.741, and plaintiff failed to show that defendant was liable for an intentional tort which caused his injuries.

Legal malpractice. Buehner v. Cheselka | 2022-Ohio-2687 | 8th Appellate District | 08/04/2022 In legal malpractice action by plaintiff-criminal defendant against defendant-attorney with whom plaintiff signed a fee agreement and contract for legal services, trial court did not err in granting plaintiff a summary judgment and in awarding damages where, inter alia, defendant did not file an appeal from denial of plaintiff's motion for a new trial and did not communicate this unfavorable decision or the need for a timely appeal to plaintiff, rather second counsel retained by plaintiff perfected the appeal which ultimately was successful on the basis of a Brady violation; second counsel's notice of appearance and lack of communication between defendant and plaintiff did not constitute termination of the attorney-client relationship between the parties, Prof.Cond.R 1.16, and damages were properly based on the amount of legal fees and expenses incurred by plaintiff in retaining second counsel.

Wrongful death/Evidence. Wicks v. Lover's Lane Market | 2022-Ohio-2652 | 9th Appellate District | 08/03/2022 In plaintiff-administrator's wrongful death and related claims action against defendants-market and employees after decedent was attacked and killed outside market, trial court erred in granting defendants' motion to strike police reports and video surveillance log where plaintiff submitted an affidavit authenticating copies of police reports, no effort was made to determine which portions of reports constituted hearsay evidence inadmissible pursuant to Evid.R. 803(8) and which portions were admissible, and only the argumentative portions of call log should have been stricken.

Traffic and OVI

Impaired driving. State v. Shoaf | 2022-Ohio-3605 | 3rd Appellate District | 10/11/2022 In a conviction in consolidated appeals in two cases of, inter alia, OVI, R.C. 4511.19(A)(1)(a); leaving the scene of an accident, R.C. 4549.02; driving between marked lanes, R.C. 4511.33; and endangering children, R.C. 2919.22(C)(1), denial of motion to suppress was not error since officers had a reasonable articulable suspicion that defendant may have committed a traffic offense to justify an investigative stop where officers received a tip from an identified citizen informant whose vehicle was allegedly sideswiped by defendant, since based on victim's knowledge of the facts described on her own observations as the events occurred.

Vehicular homicide/Failing to stop. State v. Swaney | 2022-Ohio-3578 | 2nd Appellate District | 10/07/2022 Conviction of vehicular homicide, R.C. 2903.06(A)(3)(a), and failing to stop after an accident was not against the weight of evidence based on defendant's acts of operating a truck with defective brakes while pulling a trailer and passing a stopped car on the right shoulder after seeing a pedestrian walking across the street, and the jury reasonably could have relied on the state's evidence to find that defendant's brakes were not functioning properly, and defendant admitted to officer she could not stop "with force."

Impaired driving/Sentencing. State v. Jendrusik | 2022-Ohio-3525 | 7th Appellate District | 09/30/2022 In a conviction by plea to OVI, although denial of motion to suppress a HGN sobriety test was error since the state failed to show that trooper administered the test in substantial compliance with standardized testing procedures, trooper nevertheless had probable cause to arrest defendant for OVI since trooper had reasonable suspicion to make a traffic stop because vehicle had a cracked windshield, and when trooper approached the driver's side of the vehicle, he smelled alcohol, noticed defendant's eyes were bloodshot and glassy, when trooper requested defendant to exit vehicle, he was "unsteady on his feet," and trooper continued to smell alcohol during the safety pat-down.

Impaired driving. State v. Hodges | 2022-Ohio-3535 | 5th Appellate District | 09/30/2022 In a conviction by plea to OVI, R.C. 4511.19(A)(1)(a) and (d), denial of motion to suppress was not error since trooper had reasonable articulable suspicion that driver was intoxicated to extend the detention to perform field sobriety tests where trooper stopped vehicle for speeding late on a Saturday night and upon approaching the vehicle and speaking with defendant, trooper noticed defendant had glassy, bloodshot eyes, and a strong odor of alcohol on his breath, and defendant admitted to drinking six beers earlier in the day.

Impaired driving. State v. Pinnick | 2022-Ohio-3471 | 9th Appellate District | 09/30/2022 In a conviction by plea to two counts of OVI, denial of motion to suppress was not error where claim that the stop of defendant's vehicle for speeding was unconstitutional because pacing is a prohibited "unaided visual estimation" of determining a motorist's speed under R.C. 4511.091(C)(1) is without merit since trooper used his speedometer to determine his own speed that he then used to pace defendant's vehicle, and that method is an "electrical, mechanical, or digital device to determine the speed of a motor vehicle" that officers are expressly permitted to use under R.C. 4511.091(C)(1)(a), and the dashcam video supported the trooper's testimony.

Impaired driving. State v. Washington | 2022-Ohio-3478 | 11th Appellate District | 09/30/2022 In a bench conviction of OVI, R.C. 4511.19(A)(1)(a), claim that there was not concrete evidence of defendant's blood alcohol level because officer never sought a search warrant to obtain her blood sample when she refused to submit to the breath alcohol test is without merit since a suspect's refusal to submit to a breath test is probative evidence of impairment, defendant's refusal to submit to the field sobriety field tests is suggestive of impairment, and a court may consider a refusal to take field sobriety tests when determining a defendant's guilt, Anistik.

Impaired driving/Search. State v. Rasool | 2022-Ohio-3409 | 1st Appellate District | 09/28/2022 In appeal by state of grant of a motion to suppress any evidence obtained in the warrantless search of defendant's motor vehicle following a traffic investigation that led

to charging defendant with OVI and failure to control, R.C. 4511.19(A)(1)(a), (d) and R.C. 4511.202, the trial court did not err in suppressing evidence obtained in the warrantless search where the court found that officer failed to administer the field sobriety test properly and that officer's credibility was diminished by the inconsistencies in her testimony and her inability to recall critical details from the night in question.

Impaired driving/Forfeiture. State v. O'Malley | 2022-Ohio-3207 | Supreme Court of Ohio | 09/15/2022 In a conviction by plea of misdemeanor OVI, R.C. 4511.19(A)(1), forfeiture of vehicle pursuant to R.C. 4511.19(G)(1)(c)(v) did not violate the equal protection clauses in the state or federal Constitutions by treating owners and nonowners differently since it has a rational basis and a statutory classification is not invalid just because it is underinclusive and could have been drafted more expansively to cover additional evils; also, vehicle forfeiture is not an unconstitutionally excessive fine or disproportionate penalty under the Eighth Amendment of the federal Constitution since forfeiture was not grossly disproportional to the gravity of defendant's offense as applied to his particular set of facts.

Impaired driving/Suppression. State v. Kotouch | 2022-Ohio-3421 | 7th Appellate District | 09/14/2022 In prosecution for a violation of driving an all-terrain vehicle (ATV) on a county road, R.C. 4519.40, and for driving while under the influence, R.C. 4511.19(A)(1)(A), (A)(1)(H), grant of motion to suppress was not error where officer lacked reasonable suspicion to initiate a traffic stop for an act not prohibited by statute since he did not have a legal basis to initiate a stop of the vehicle, and his stated purpose was inconsistent with R.C. 4519.40(A)(1) since nowhere in the statute is an ATV prohibited from being operated on county roads, but only on state highways.

Operating vehicle with a suspended license. State v. Wilson | 2022-Ohio-3202 | Supreme Court of Ohio | 09/14/2022 Conviction of operating a vehicle with a suspended license, R.C. 4510.14(A), was not supported by sufficient evidence since, although defendant's license was suspended, she was not operating the vehicle when she was arrested while sitting in the driver's seat of a vehicle with the engine running, but she was not

operating the vehicle as required by R.C. 4510.14(A) since she had been sleeping in the parked vehicle with the engine running, but she was not driving the vehicle since it was not moving, R.C. 4511.01(HHH).

Failure to stop for school bus. State v. Williams | 2022-Ohio-3292 | 7th Appellate District | 09/13/2022 Bench conviction of failure to stop for a school bus, R.C. 4511.75(A), was not against the weight of evidence where, although school bus driver's description of the offending vehicle was not entirely accurate, defendant was listed by his employer as the driver of the vehicle that the school bus driver had provided the license number for on the day that the school bus driver reported a truck had failed to stop for the school bus.

Aggravated vehicular homicide/ Impaired driving/Speedy trial. State v. Sanford | 2022-Ohio-3107 | Supreme Court of Ohio | 09/08/2022 In a conviction by plea to, inter alia, aggravated vehicular homicide and OVI, arising out of defendant's vehicle colliding with a motorcyclist, for which defendant was arrested and incarcerated for failure to stop after an accident, and he was later indicted on additional charges for driving with a prohibited level of drugs in his system based on toxicology results that were not available at the time of his arrest, the state was entitled to a new speedy-trial period for the additional charges since the test results were new information necessary to establish the new charges.

Impaired driving. State v. Corn | 2022-Ohio-3095 | 9th Appellate District | 09/06/2022 In prosecution of OVI, grant of motion to suppress was error where officer was performing a community caretaking function when he stopped to check on a vehicle that was stopped on the berm of a road, officer had a reasonable suspicion to infer additional criminal activity and extend the stop since he found defendant parked on the berm of the highway at 10:00 p.m., the smell of alcohol coming from his vehicle, the unlit cigarette hanging from his mouth, his red, bloodshot, and glassy eyes, his slurred speech and his admission that he had consumed alcohol that evening.

Motor vehicle window tint. State v. Scott | 2022-Ohio-3020 | 1st Appellate District | 08/31/2022 In a conviction of window-tint violation, improper change of course and running a red light, officers had reasonable suspicion of motor vehicle violations for the traffic stop, and sufficient evidence of an improper change of course and running a red light, but conviction of window-tint violation, R.C. 4513.241, is reversed since the state failed to demonstrate that officers' testimony that they could not see into defendant's vehicle because of the dark window tint complied with the light-transmittance standards in Ohio Adm.Code 4501-41-03.

Search. State v. Griffy | 2022-Ohio-2814 | 9th Appellate District | 08/15/2022 In a conviction by plea of OVI, R.C. 4511.19(A) (1)(a), denial of motion to suppress was not error since defendant failed to challenge the trial court's ruling that officer acted in good faith by reasonably relying on R.C. 2317.02 and 2317.022 in obtaining defendant's blood alcohol test records from the hospital and, since officer only sought a copy of the test results that the hospital had already performed for treatment purposes, the good-faith exception applied to the search.

Workers' Compensation

Vision loss. State ex rel. Cogan v. Indus. Comm. | 2022-Ohio-3748 | 10th Appellate District | 10/20/2022 Claimant's petition for a writ of mandamus seeking to compel industrial commission to vacate order denying his request for payment of scheduled-loss award for loss of vision in one eye, is granted with a limited writ where, although claimant did not establish a pre-injury baseline by showing that he underwent prior surgical correction of his eye following childhood injury, medical evidence showed that he had usable vision in the eye prior to the industrial injury and was left without usable vision following the injury, R.C. 4123.95.

Death benefits/Limitations/Extension. Ramos v. Canton | 2022-Ohio-3642 | 5th Appellate District | 10/11/2022 In application for death benefits on behalf of children after decedent-father suffered near-instantaneous death while working for employer, summary judgment in favor of employer on reasoning that the death benefits claim was not timely filed under R.C.

4123.84(A) is affirmed where the statute creates an extension of the one-year statute of limitations for injury and occupational disease claims, but there is no corresponding extension which applies to death claims.

Jury interrogatories/Expert testimony. Holly v. Greater Cleveland Regional Transit Auth. | 2022-Ohio-3236 | 8th Appellate District | 09/15/2022 Judgment based on jury verdict finding that claimant was entitled to workers' compensation benefits for bilateral carpal tunnel syndrome is affirmed where trial court's refusal to send transit authority's (TA) proposed jury interrogatories was not an abuse of discretion since the jury's answer to the proposed interrogatories was implicit in the verdict, the parties agreed that claimant suffered from carpal tunnel syndrome, and the interrogatories were redundant, Civ.R. 49; also, the court did not err in granting claimant's motion in limine to preclude TA's expert from testifying since TA was in possession of expert's report but did not turn it over until less than 30 days before trial.

Vision loss. State ex rel. Harris v. Indus. Comm. | 2022-Ohio-3149 | 10th Appellate District | 09/08/2022 Claimant's petition for a writ of mandamus to compel industrial commission to vacate its order denying his application for scheduled loss of vision compensation is denied and magistrate's decision is adopted since R.C. 4123.57(B) does not authorize loss of use compensation where relator's vision loss was due to loss of brain function rather than actual damage to the eye structure or function itself, and claimant failed to show why physician's report, which provided some evidence for denial of application, was equivocal or internally inconsistent.

Manual classification change/Explanation. State ex rel. Ohio-Kentucky-Indiana Regional Council of Govts. v. Bur. of Workers' Comp. | 2022-Ohio-3058 | Supreme Court of Ohio | 09/06/2022 Denial of relator-council of governments' petition for a writ of mandamus seeking to compel respondent-bureau of workers' compensation to change relator's newly assigned manual classification and to reassign relator's previous two classifications, which apply to private employers, is reversed and remanded since the bureau's classification of relator as a "special public authority," which is a type of "public-employer

taxing district," without explaining why that classification most closely describes relator's business with respect to its degree of hazard, was an abuse of discretion; a limited writ of mandamus is issued ordering the bureau to evaluate the degree of hazard in relator's business and to explain the bureau's conclusions.

Specific safety requirement. State ex rel. Cassens Corp. v. Indus. Comm. | 2022-Ohio-2936 | 10th Appellate District | 08/23/2022 Petition for a writ of mandamus to compel industrial commission to vacate its order finding that employer had violated a specific safety requirement relating to an injury employee sustained is granted since a specific safety requirement violation must occur within a workshop or factory and employer's outdoor storage lot did not constitute a workshop because no manufacturing occurred on the lot, and employee's role in driving vehicles on the lot was not part of the manufacturing process, Ohio Admin. Code 4123:1-5-13.

Death benefits/Dependent. State ex rel. Tradesmen Internatl., L.L.C. v. Indus. Comm. | 2022-Ohio-2935 | 10th Appellate District | 08/23/2022 Petition for writ of mandamus seeking to compel industrial commission to vacate its order finding child to be a partial dependent of deceased employee and awarding a lifetime death benefit to child is denied since there was some evidence that child was unable to provide for himself without assistance and that decedent provided assistance, and under R.C. 4123.59(C) the administrator of workers' compensation has discretion in determining benefits for a partial dependent.

Parking injury/Benefit to employer. Hinerman v. Savant Sys., Inc. | 2022-Ohio-2857 | 4th Appellate District | 08/16/2022 In employee's workers' compensation action seeking benefits for injury sustained in employer's parking lot before start of shift, trial court erred in granting employee's motion for summary judgment since employee was injured when she was closing the door to her vehicle and her presence in the parking lot provided little benefit to employer, so her injury did not arise out of employment and is not compensable, R.C. 4123.01, even though employee had a fixed place of employment and was injured in the zone of employment.

Temporary total disability. State ex rel. Keck v. Indus. Comm. | 2022-Ohio-2782 | 10th Appellate District | 08/11/2022 Petition for writ of mandamus seeking to compel industrial commission to vacate order terminating claimant's temporary total disability compensation is granted where physician's report did not address claimant's medical history or provide evidence that claimant had reached maximum medical improvement, and physician's medical opinion was based on claimant's retirement and reasons for retirement rather than his disability.

Specific safety requirement/Guard modification. State ex rel. Levitin v. Indus. Comm. | 2022-Ohio-2750 | 10th Appellate District | 08/09/2022 Petition for a writ of mandamus seeking to compel industrial commission to vacate its order finding that employer did not violate a specific safety requirement when it modified the safety guard on a machine, which failed and led to claimant's injury, is denied since testimony of multiple witnesses supported commission's conclusion that the modified guard provided reasonable safety, evidence showed that guard worked as expected after being regularly tested, and there was no evidence that the guard had previously failed, so employer was not forewarned of increased risk.

Participation in fund/Course of employment. Kerr v. OhioHealth Corp. | 2022-Ohio-2697 | 10th Appellate District | 08/04/2022 In plaintiff's action seeking workers' compensation benefits for injuries sustained when he slipped and fell during a lunch break while traveling for his job, summary judgment in favor of employer denying participation in the fund was not error where, although plaintiff was not a fixed situs employee because traveling was an integral part of his job, the injury did not occur in the course of employment because plaintiff was not provided a formal lunch hour and was not reimbursed for lunch, and therefore he was on a personal errand rather than on an employment obligation.