

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 28, 2022

**110530** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
ACORN DEVELOPMENT, LLC v THE SANSON COMPANY, ET AL.

**111003** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
ACORN DEVELOPMENT, LLC v THE SANSON COMPANY, ET AL.

Affirmed.

Emanuella D. Groves, J., and Mary J. Boyle, J., concur; Sean C. Gallagher, A.J., dissents (with separate opinion).

**KEY WORDS:** *Judgment on the pleadings; express easement; implied easement; de novo.*

*Judgment on the pleadings was proper where express easement terminated on expiration of lease and appellant failed to establish right to use driveway beyond term of expired lease.*

*In ruling on judgment on the pleadings, trial court's consideration of a journal entry in a prior case did constitute consideration of facts outside the record. Such a journal entry is not a pleading for purposes of evaluating a judgment on the pleadings. However, because appellant failed to present any set of facts for which relief could be granted, such consideration was harmless error.*

**110673** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CURTIS L. JOHNSON, JR.

Affirmed.

Sean C. Gallagher, A.J., and Frank Daniel Celebrezze, III, J., concur; Anita Laster Mays, J., dissents (with separate opinion).

**KEY WORDS:** *Murder; self-defense; jury instruction; insufficient evidence; circumstantial evidence.*

*The trial court did not err in refusing to instruct the jury on self-defense in light of the particular facts of the case and the conviction for murder was not based on insufficient evidence.*

**110887** SHAKER HTS. MUNI. C Criminal Muni. & City  
CITY OF UNIVERSITY HEIGHTS v JESSICA A. JOHANAN

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Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *App.R. 16(A)(7); App.R. 16(A)(3); App.R. 12(A)(2); transcript; App.R. 9; presume regularity.*

**Appellant's conviction affirmed where appellant's brief did not separately argue the assignments of error as required by App.R. 16(A)(7) and did not cite to portions of the record to support the assignments of error as required by App.R. 16(A)(3), and therefore, pursuant to App.R. 12(A)(2), the appellate court was within its discretion to summarily overrule the assignments of error and affirm the trial court. Also, because appellant did not make a transcript part of the appellate record as required by App.R. 9, the appellate court could presume regularity in the trial court proceedings and the presence of sufficient evidence to support appellant's conviction.**

**110913** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BRENDA NIEDERST, ET AL. v KOHRMAN JACKSON & KRANTZ, LLP, ET AL.

Affirmed.

Eileen T. Gallagher, J., and Mary J. Boyle, J., concur; Mary Eileen Kilbane, P.J., dissents (with separate attached opinion).

**KEY WORDS:** *Legal malpractice; expert testimony; expert report deadline.*

**Trial court properly granted summary judgment in favor of law firm on plaintiff's legal-malpractice claim where plaintiff failed to produce expert testimony demonstrating that the firm committed malpractice and the alleged malpractice was not clear and obvious such that expert testimony was unnecessary.**

**110919** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
ISAIAH MARTIN, ISAIAH MARTIN v STATE OF OHIO

Affirmed.

Sean C. Gallagher, A.J., and Emanuella D. Groves, J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion).

**KEY WORDS:** *Wrongful imprisonment; aggravated assault; preclusive effect; independent review; R.C. 2743.48(A)(5); actual innocence; self-defense; deadly weapon; preponderance of the evidence; summary judgment; Civ.R. 56; de novo.*

**Summary judgment in favor of the state in appellant's**

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(Case 110919 continued)

**wrongful-imprisonment action was upheld where no genuine issue of material fact existed as to whether the appellant was acting in self-defense when he shot an unarmed man in a police station parking lot. Reasonable minds could only conclude that appellant voluntarily entered the encounter and that he exceeded the force reasonably necessary for self-defense. The appellant could not prove his actual innocence by a preponderance of the evidence. Also, the record did not support appellant's assertions that the trial court failed to conduct an independent review of the evidence or that the trial court gave the findings in the criminal case preclusive effect.**

**110938** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: G.W.

Affirmed.

Emanuella D. Groves, J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, A.J., concurs (with separate opinion).

**KEY WORDS: Parental rights; permanent custody; clear and convincing evidence; R.C. 2151.414(D)(1) and (D)(2)/best interest of the child.**

***It was not against the manifest weight of the evidence where the juvenile court granted the agency's motion for permanent custody. The child had been in the temporary custody of the agency for more than two years and Mother never fully engaged in the objectives of the case plan. The juvenile court made findings that were consistent with granting permanent custody under both R.C. 2151.414(D)(1) and (D)(2), which are alternative means for determining the best interest of the child. A finding under R.C. 2151.414(D)(2), mandates that the juvenile court find that it is in the best interest of child to place it in the agency's permanent custody.***

**110972** COMMON PLEAS COURT A Criminal C.P.

STATE OF OHIO v SHAVARRI DIXON

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Sufficiency of the evidence; manifest weight of the evidence; accident; theory of transferred intent; self-defense; ineffective assistance of counsel; consecutive sentences.**

***The state presented sufficient evidence to support the defendant's murder and felonious assault convictions, and the convictions are not against the manifest weight of the evidence. Although the***

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**defendant may not have intended to kill the specific victim, he intended to kill someone and therefore is guilty under the theory of transferred intent.**

**Appellant's trial counsel was not ineffective for not pursuing a self-defense theory; the defense was this was an accident and that defense is inconsistent with self-defense.**

**The trial court made the statutorily mandated findings for the imposition of consecutive sentences, incorporated them into the sentencing judgment entry, and the findings are clearly and convincingly supported by the record.**

**110996** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v TERRELL WEST

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS: Postconviction motion to correct void sentence; standard of review.**

**Appellant sought reversal and remand of trial court's denial of his motion to correct void sentence for the court to state its reasons for denying the motion. Appellant made no argument the denial was in error. Because the trial court had no duty to state its reasons in denying the motion and where review of the denial of a motion to vacate a void sentence is de novo, the judgment of the trial court is affirmed.**

**110997** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TIMOTHY EVANS

Dismissed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: Jurisdiction; judgment of conviction; sentencing journal entry; final, appealable order; nunc pro tunc entry.**

**Sentencing journal entry was not a final judgment of conviction and, therefore, was not a final, appealable order where it did not impose sentences on each of the counts of which defendant was convicted. Even if the trial court had jurisdiction, in the absence of a remand by the appellate court, to issue corrected sentencing journal entry while appeal was pending, corrected sentencing journal entry was not a proper nunc pro tunc order because it did not reflect what occurred at the sentencing hearing and was,**

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**therefore, invalid. Appeal dismissed for lack of jurisdiction.**

**111004** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
H.G. v E.G.

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

**KEY WORDS: Civ.R. 60(B); motion for relief from judgment; standard of review; necessity of hearing. A motion for relief from judgment is not a substitute for appeal.**

***Domestic relations court did not abuse its discretion by denying without hearing spouse's motion for relief from judgment pursuant to Civ.R. 60(B) seeking to vacate a dissolution. Spouse raised issues that were capable of review on appeal, and a motion for relief for judgment is not a substitute for an appeal. Further, spouse's claims that he was uncounseled or ignorant of the law did not merit consideration for relief from judgment, nor did his conclusory claim he was subject to overreaching or an unequal bargaining position because he was aware of all the facts, circumstances, and terms of the separation agreement.***

**111094** CLEVELAND MUNI. G Civil Muni. & City  
JEFF DI FIORE v SHERITA Q. BOOKER, ET AL.

Affirmed.

Sean C. Gallagher, A.J., Anita Laster Mays, J., and Eileen A. Gallagher, J., concur.

**KEY WORDS: Civ.R. 53; objections; magistrate's decision; damages; speculation.**

***The trial court did not err in overruling belated objections to a magistrate's decision, and even if the merits of the objections were considered, the landlord had not presented sufficient evidence of damages to support an award for the entire replacement cost of the used flooring.***

**111129** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v KAMILYA D. MARSH

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Affirmed.

Sean C. Gallagher, A.J., Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Aggravated menacing; misdemeanor; continuance; ineffective assistance of counsel; prejudice; App.R. 16(A)(7).*

**The appellant has not provided any specific instances of deficient conduct by trial counsel or that outcome of the trial would have been different, and therefore, the appellant failed to sustain the burden to demonstrate the existence of ineffective assistance of counsel warranting a new trial.**

**111287** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: K.H., ET AL.

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Complaint for temporary custody; motion to dismiss complaint; R.C. 2151.35(B)(1); motion for continuance; Juv.R. 23; due process.*

**Mother did not show that she was denied due process or that the juvenile court abused its discretion in overruling her objections to magistrate's decision denying her motion for continuance and in failing to dismiss the agency's complaint for temporary custody based on her claim that a prepared attorney was not available to represent Mother at the adjudicatory and dispositional hearings. Mother did not challenge the juvenile court's determinations with respect to adjudication or disposition of her children. The record reflected that Mother's counsel competently represented her at the adjudicatory and dispositional hearings, and there was no indication in the record that Mother would have offered additional or different evidence or made additional or different arguments if another more prepared attorney had been defending Mother at the hearings.**