

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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September 29, 2022

**107027** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JESUS GARCIA

Affirmed.

Anita Laster Mays, P.J., Mary Eileen Kilbane, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *R.C. 2907.02(A)(2); rape; R.C. 2907.05(A)(1); gross sexual imposition; R.C. 2905.01(A)(4); kidnapping; R.C. 2907.323(A)(1); illegal use of minor in nudity-oriented material or performance; R.C. 2919.22(B)(1); endangering children; sufficiency and manifest weight of the evidence; ineffective assistance of counsel; consecutive sentences; R.C. 2947.23(A)(1)(a) and (C); costs; R.C. 2929.18(A)(3)(a); maximum fine.*

*Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. A parent who is not the legal guardian of the child is not exempt from prosecution under R.C. 2907.323(A)(1). The record supports that counsel was not ineffective and consecutive sentences were properly imposed. The trial court retains jurisdiction to modify, waive, or suspend costs at sentencing or thereafter upon defendant's motion.*

**110987** PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
WENDY JACOBSON, ET AL. v DOLORES H. GROSS, ET AL.

Affirmed.

Emanuella D. Groves, J., concurs; Kathleen Ann Keough, P.J., concurs (with lead opinion and with separate concurring opinion), and Eileen T. Gallagher, J., concurs (with separate concurring opinion).

**KEY WORDS:** *Trust; complaint for breach of fiduciary duties; settlement agreement; breach; probate court's jurisdiction to enforce settlement agreement.*

*We affirm the probate court's judgment enforcing the settlement agreement. Despite its limited jurisdiction, pursuant to R.C. 2101.24(C), the probate courts have plenary power "at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code."*

*In this matter, despite appellant's contentions, because the Appellees brought a complaint for breach of fiduciary duty and sought removal of the trustee of a trust, this was a matter that was properly before the probate court. Claims for breach of fiduciary duty that inexorably implicate control over the conduct of fiduciaries are within the subject-matter jurisdiction by virtue of R.C. 2101.24(A)(1)(c).*

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**Importantly, the settlement agreement, at issue, flowed directly from the complaint and, as the probate court aptly noted, “was entered into to settle and resolve the breach, accounting and removal actions concerning the Trust.”**

**Therefore, because the complaint was properly before the court and the settlement agreement flowed from the complaint, the probate court had plenary power to enforce the settlement agreement.**

**111035** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MARK MASTERSON, ADMINISTRATOR, ET AL. v ZACHARY BRODY, ET AL.

Affirmed.

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

**KEY WORDS: Civ.R. 56; tort liability; wrongful death; special relationship; business invitee; social guest; innkeeper; foreseeable.**

**Tort liability cannot be imposed against entities out-of-possession of a property at the time of the tortious conduct and who lacked control over the tortfeasors' actions. Accordingly, the trial court's decision upon summary judgment is affirmed.**

**111043** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MARK MASTERSON, ADMINISTRATOR, ET AL. v ZACHARY BRODY, ET AL.

Affirmed.

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

**KEY WORDS: Wrongful death; jury trial; negligence; jury instruction; misconduct and inflammatory statements by counsel; expert witness; directed verdict; evidence of net worth regarding punitive damages.**

**The trial court did not abuse its discretion in not giving a jury instruction based on R.C. 2307.60(B)(2)(b).**

**In light of the defendants' evasiveness when asked to provide details of the events leading to the victim's death, counsel's cross-examination, while zealous, was not so outrageous or heinous as to deprive appellant a fair trial resulting in an excessive jury award.**

**There was substantial evidence presented at trial to support proximate causation upon which reasonable minds may differ as to**

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**whether the victim would have survived if medical attention had been sought for his injuries; under the standard for directed verdict, the certainty from a medical expert is not necessary in this case for the trial court to deny a directed verdict.**

**The trial court's determination regarding the qualification of plaintiff's economic damages expert is supported by the record. Evidence of a defendant's net worth may be considered by the jury in determining punitive damages, but this evidence is not required before otherwise proper punitive damages may be awarded to a prevailing party.**

**111048** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MARK MASTERSON, ADMINISTRATOR, ET AL. v ZACHARY BRODY, ET AL.

Affirmed.

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

**KEY WORDS: Wrongful death; negligence; duty; R.C. 2305.45; motion to reduce jury verdicts.**

***While foreseeability alone is not always sufficient to establish the existence of a duty, in this case, appellant set in motion codefendant's assault on the victim and exposed the victim to a high risk of harm; the foreseeability of the harm obligated appellant to exercise reasonable care toward the victim. While there is no duty to control a third party's criminal act and while a special relationship is generally required to create a duty, under the particular circumstances of this case, appellant owed a duty to exercise reasonable care toward the victim and mitigate his injuries such as seeking medical attention for him, once appellant was aware of the gravity of the victim's injuries. Accordingly, the trial court properly denied his motion for directed verdict and JNOV.***

***R.C. 2305.45 ("Search by unauthorized person"), read in context and in pari materia with the related statutes, does not to apply to the circumstances of this case and does not provide a basis for liability on appellant.***

**111082** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DENNEZ TOLLIVER

Dismissed.

Eileen A. Gallagher, P.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

**KEY WORDS: Community-control sanctions; failure to reserve indefinite sentence; plain error; violation of community control;**

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**new sentence; moot.**

**State's challenge to trial court's judgment entry that failed to reserve an indefinite prison sentence under the Reagan Tokes Law when sentencing defendant to community-control sanctions was moot where defendant was later sentenced to a definite prison term after violating community control and state did not appeal that prison sentence.**

**111186** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: V.H.

Affirmed.

Cornelius J. O'Sullivan, Jr., J., Sean C. Gallagher, A.J., and Mary J. Boyle, J., concur.

***KEY WORDS: Delinquency adjudications; rape; gross sexual imposition; incompetent child victim; Evid.R. 807; Evid.R. 803(4); sufficiency of evidence; manifest weight of evidence.***

***A reviewing court must consider all the evidence admitted at trial, even improperly admitted evidence. The state presented sufficient evidence to sustain the rape and gross sexual imposition delinquency adjudications.***

***The fact that a child has been declared incompetent to testify does not necessarily prohibit the admission of the child's statements at a trial or adjudicatory hearing. 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 under the rule. If the state cannot satisfy the rigors of Evid.R. 807, a child's statement may be admitted through a different hearsay exception.***

***Evid.R. 803(4) permits the introduction of statements made for the purposes of medical diagnosis or treatment. What constitutes diagnosis and treatment is neither rigidly construed nor limited to licensed physicians.***

***Although the trial court prohibited the child victim's statements to the SANE nurse and case worker under Evid.R. 807, the trial court properly allowed them under Evid.R. 803(4).***

***The trial court did not lose its way in adjudicating appellant delinquent on the within charges. The adjudications are not against the manifest weight of the evidence.***

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<b>111222</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DOMINIC BOOKER			

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Reagan Tokes; sentence; R.C. 2953.08(G); R.C. 2929.11 and 2929.12.*

***Judgment affirmed. Appellant's sentence is not unconstitutional under the Reagan Tokes Act. Furthermore, the record demonstrates that the trial court imposed Booker's sentence after consideration of the factors and principles in R.C. 2929.11 and 2929.12, and his sentence is within the range authorized by the Revised Code.***