

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 13

**April 11, 2019**

**105833** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
KIARA E. TORRES, ET AL. v CONCRETE DESIGNS INC., ET AL.

**106493** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
KIARA E. TORRES v CONCRETE DESIGNS INC., ET AL.

Affirmed in part, vacated in part.

Frank D. Celebrezze, Jr., J., and Anita Laster Mays, J., concur; Sean C. Gallagher, P.J., concurs in part, concurs in judgment only in part and dissents in part with separate opinion.

**KEY WORDS:** *Civ.R. 59(A); motion for new trial; noneconomic damages; passion and prejudice; counsel remarks; misconduct by the prevailing parties; R.C. 2315.19; economic damages; judgment notwithstanding the verdict; permanent and substantial physical deformity; stipulations; R.C. 1343.03(C); prejudgment interest; good faith effort.*

*The trial court did not abuse its discretion in denying appellants' motion for a new trial. Likewise, the trial court did not err in denying appellants' post-judgment motion pursuant to R.C. 2315.19. The awards of damages were not excessive given the severity of the injuries to Torres and Rojas. Moreover, there existed sufficient evidence for the jury to determine that the Torres's injuries amounted to a "permanent and substantial physical deformity," the parties clearly stipulated that the Torres's injuries amounted to a "permanent and substantial physical deformity," and Torres's and Rojas's damages awards were not capped at \$350,000. The trial court's award of prejudgment interest was an abuse of discretion.*

**106525** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MARK D. SOBERAY v GREYHOUND LINES INC., ET AL.

Affirmed.

Larry A. Jones, Sr., J., and Mary J. Boyle, P.J., concur; Patricia Ann Blackmon, J., concurs in judgment only.

**KEY WORDS:** *Civ.R. 59/motion for new trial; Civ.R. 50(B)/motion for judgment notwithstanding the verdict; Pennsylvania Fair Share Act/empty chair rule; jury instruction/emergency exception/assured clear distance; internal rules and regulations; expert testimony; punitive damages; prejudgment interest; attorney fees.*

*Appellant failed to request a new trial pursuant to Civ.R 59(A); therefore, review of the trial court's denial of appellant's motion for a new trial is not properly before this court.*

*Appellant, prior to trial, settled with a separate entity; evidence*

(Case 106525 continued)

attributing any liability against that entity was properly excluded from trial. Appellant, during trial, failed to seek apportion fault to that entity under the Pennsylvania Fair Share Act.

Appellant failed to show that a sudden emergency existed and that its driver did not violate the assured clear distance rule. An additional instruction to the jury on the emergency exception to the assured clear distance rule was not warranted.

Appellant's handbook on driver safety and testimony about those rules and regulations were properly entered into evidence, and the subsequent jury instructions given regarding those rules and regulations were also proper.

Where it was already established during testimony by appellant's safety director that appellant's rules and regulations held drivers to a higher standard, no further expert testimony was necessary.

Appellant's delegating discretion to drivers whether to ignore specific rules in the handbook was equivalent to ignoring passenger safety. The award of punitive damages was not error.

There was no conflict shown between Ohio's prejudgment interest remedial statute and Pennsylvania's prejudgment interest procedural law. Appellant (1) has failed to show that it was prejudiced by the choice of Ohio law for prejudgment interest, (2) was shown to have withheld important discovery, and (3) failed to make a good faith effort to settle the case. The trial court did not err in granting appellee's motion for prejudgment interest.

Where the trial court found appellant's conduct to be vexatious, it was not error to grant appellee's motion for attorney fees.

<b>106988</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAMES COPELAND			

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Flight instruction, complicity instruction, manifest weight of the evidence, allied offenses.*

*The trial court did not abuse its discretion in providing a flight instruction because there was evidence that the defendant fled from the scene. The trial court also did not abuse its discretion in providing a complicity instruction as there was sufficient evidence to show that Copeland "support[ed], assist[ed], encourage[d], cooperate[d] with, advise[d], or incite[d]" a principal offender. The defendant's convictions were not against the manifest weight of the evidence. The defendant's convictions for felonious assault and discharging a firearm on or near prohibited premises were not allied offenses because the crimes resulted in different harm to different victims.*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 3 of 13

<b>107007</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
DORIS KNIGHT v CITY OF CLEVELAND, ET AL.			

Affirmed and remanded.

Raymond C. Headen, J., and Frank D. Celebrezze, Jr., J., concur; Mary J. Boyle, P.J., concurs in judgment only.

**KEY WORDS:** *Summary judgment; Civ.R. 56; political subdivision immunity; R.C. 2744.02; R.C. 2744.03; genuine issue of material fact; willful and wanton misconduct; wanton or reckless manner.*

*Denial of summary judgment was proper where genuine issues of material fact existed as to whether an officer's operation of a motor vehicle constituted willful and wanton misconduct, or whether the officer acted in a wanton or reckless manner.*

<b>107022</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DANELL HICKS			

Affirmed.

Raymond C. Headen, J., Frank D. Celebrezze, Jr., P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Motion to withdraw guilty plea; Crim.R. 11; knowing, intelligent, and voluntary; ineffective assistance of counsel.*

*Defendant's arguments regarding the denial of his motion to withdraw his guilty plea are not properly before the court where the motion was filed after his notice of appeal, and he did not file an amended notice of appeal. To the extent that this court can consider his arguments challenging his plea, we find that his plea was knowingly, intelligently, and voluntarily entered. Defendant's arguments regarding the imposition of a consecutive sentence for a probation violation in a separate case are not properly before this court where he failed to file a notice of appeal in that case. Even if this argument were properly before us, it lacks merit because the trial court made the findings necessary to impose consecutive sentences and these findings are supported by the record.*

<b>107060</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAZELLE NEWMAN			

Affirmed.

Raymond C. Headen, J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 4 of 13

(Case 107060 continued)

**KEY WORDS:** Ineffective assistance of counsel; failure to object; victim impact testimony; hearsay; attempted murder; aggravated robbery; felonious assault; having weapons while under disability.

Counsel was not ineffective for failing to object to witness testimony that was not improper victim impact testimony or hearsay and such objections would not have resulted in a different outcome at trial.

<b>107120</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAMION T. MATHEWS			

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** Intellectual disabilities; competency to stand trial; sentence contrary to law; consecutive sentences; ineffective assistance of counsel.

*Appellant has a history of mental illness, substance abuse, juvenile and criminal offenses dating back to 2011 when he was 15 years old. An intelligence test indicated an IQ of 49. The record contains sufficient evidence to support the court's finding that appellant was competent to stand trial.*

<b>107122</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
JEFFREY GRIMES v ESTATE OF RICHARD A. OVIATT, ET AL.			

Affirmed.

Michelle J. Sheehan, J., Mary Eileen Kilbane, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** Sanctions; frivolous complaint; R.C. 2323.51.

*Filing a losing case is not automatically frivolous. R.C. 2323.51 does not purport to punish a party for raising an unsuccessful claim, and the statute should be applied to chill only "egregious, overzealous, unjustifiable and frivolous" actions. Unless there is a clear-cut violation of the statute, a potential dilemma confronts a lawyer in satisfying his obligation of professional responsibility that requires zealous representation on one hand and satisfying his obligations under R.C. 2323.51 on the other hand. In some close cases, applying R.C. 2323.51 would have a chilling effect on legitimate advocacy by discouraging aggressive representation by the attorney for the client. Given the aggressive litigation tactics used by both parties in this case, we conclude that it was within the sound discretion of the trial court to decline to award sanctions.*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 5 of 13

**107127** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
WILLIE PHELPS, ET AL. v COMMUNITY GARDEN ASSOCIATION, INC.

Affirmed in part, reversed in part, and remanded.

Eileen A. Gallagher, J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Summary judgment; restrictive covenant; deed; declaration; amendment; assessment.*

*Trial court errs by interpreting subdivision's declaration as requiring membership in association where the plain language of the declaration makes no such requirement. Where declaration outlines procedure for and scope of amendment, a conforming amendment is not invalid. Trial court does not err granting summary judgment against nonmovant where nonmovant fails to meet reciprocal burden of proving entitlement to recovery under statute.*

**107173** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: CONTEMPT OF MEHDI SAGHAFI

Affirmed.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Contempt; QDRO; duty; cooperate; attorney fees.*

*Trial court did not abuse its discretion in finding husband in contempt of court because he owed a duty to cooperate with wife in dividing ERISA-qualified retirement accounts because the QDROs and the domestic court's local rules prohibit a participant from taking any actions or inactions in circumventing the terms and provisions of the QDROs. Husband's refusal to qualify the QDROs was a violation of a court order. The trial court did not abuse its discretion in awarding attorney fees to wife; no evidence of income and expenses is required prior to awarding attorney fees arising out of contempt proceedings.*

**107202** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE: A.S.

Reversed and remanded.

Michelle J. Sheehan, J., Mary Eileen Kilbane, A.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Juvenile; restitution; R.C. 2152.20(A)(3); competent*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 6 of 13

(Case 107202 continued)

**and credible; economic loss; discrepancies; plain error.**

**The trial court committed plain error by awarding \$224,514 in restitution where the record lacked competent, credible evidence to resolve the discrepancies in the requested restitution amounts.**

<b>107213</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DELANTE WRIGHT			

Reversed and remanded.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Resentencing; consecutive sentences; concurrent sentences; nunc pro tunc journal entries; jurisdiction.*

***Where trial court did not sentence defendant to consecutive sentences and the journal entries were silent as to whether the sentences were concurrent or consecutive, defendant's sentences were concurrent as a matter of law; because the journal entry of sentencing was a final judgment, the trial court had no jurisdiction to resentence defendant to impose consecutive sentences; although the trial court may have intended to impose consecutive sentences, it could not use a nunc pro tunc entry to modify defendant's sentence from concurrent to consecutive sentences because a nunc pro tunc entry may only be used to reflect what the court actually decided, not what it intended to decide.***

<b>107223</b>	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v MICHAEL D. BROWN			

Affirmed.

Raymond C. Headen, J., Mary Eileen Kilbane, A.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Assault; menacing; joinder; Crim.R. 8; Crim.R. 13; Crim.R. 14; severance; simple and direct evidence; prejudice; abuse of discretion; sufficiency of the evidence; manifest weight.*

***The trial court did not abuse its discretion in denying defendant's oral motion to sever on the morning of trial where the evidence of the offenses was simple and direct and defendant was unable to show that he was prejudiced by joinder. The conviction was supported by sufficient evidence and was not against the weight of the evidence.***

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 7 of 13

<b>107230</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
NELL LINDSAY v CITY OF GARFIELD HEIGHTS, ET AL.			

<b>107236</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
NELL LINDSAY v CITY OF GARFIELD HEIGHTS, ET AL.			

Reversed and remanded.

Eileen T. Gallagher, P.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Ordinance; violations; notice; due process; standing; cameras; traffic; class action; class member; definition; ambiguous; grammar; interpretation; identifiable.*

*As currently defined, the trial court's class definition is overly ambiguous and is subject to more than one reasonable interpretation. In the absence of a precise language, the certified class is not sufficiently identifiable. The trial court abused its discretion in certifying the class as defined.*

<b>107238</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID N. RANDALL			

Affirmed.

Patricia Ann Blackmon, P.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Grand theft; manifest weight of the evidence; ineffective assistance of council; waiver of court costs.*

*Defendant's conviction of grand theft affirmed because it was supported by the weight of the evidence. Counsel was not ineffective by failing to request a waiver of costs as this can be done at the time of sentencing or any time thereafter.*

<b>107242</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TERRANCE MITCHELL			

Affirmed.

Michelle J. Sheehan, J., Mary Eileen Kilbane, A.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Felony sentencing; R.C. 2929.11 and 2929.12; purposes and principles of sentencing; consider; seriousness and recidivism factors; contrary to law.*

*The appellant's sentence is not contrary to law where the record demonstrates the trial court considered the purposes and*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 8 of 13

(Case 107242 continued)

**principles of sentencing under R.C. 2929.11 and the relevant seriousness and recidivism factors under R.C. 2929.12.**

<b>107248</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DENNIS JARRELL			

Affirmed.

Frank D. Celebrezze, Jr., J., Mary Eileen Kilbane, A.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Tampering with records; R.C. 2913.42(A)(2); identity fraud; R.C. 2913.49(B)(2); allied offenses of similar import; R.C. 2941.25.*

**Appellant's convictions of attempted tampering with records and identity fraud were not allied offenses of similar import because they involved separate victims. The trial court did not commit plain error by sentencing appellant on both convictions.**

<b>107271</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v WILLIAM A. JOHNSON			

Affirmed

Sean C. Gallagher, P.J.; Anita Laster Mays, J., concurs; Eileen A. Gallagher, J., concurs in judgment only.

**KEY WORDS:** *Burglary; forensic evidence; ineffective assistance of counsel; prejudice.*

**Even if a deficient performance under the Strickland standard was assumed, the defendant has not demonstrated that the deficient performance would have been outcome determinative in light of the overwhelming evidence of guilt.**

<b>107308</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v NATHANIEL HILL			

Affirmed.

Mary Eileen Kilbane, A.J., Mary J. Boyle, J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Sufficiency of the evidence.*

**A claim of insufficient evidence raises the question whether the**



## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 9 of 13

(Case 107308 continued)

evidence is legally sufficient to support the verdict as a matter of law. In reviewing a sufficiency challenge, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

In addition to providing evidence that the house was an occupied structure, the state also provided evidence that entrance was gained through force, stealth, or deception. Officer Congress testified that the windows on the east and west sides of the house appeared to have been tampered with. Officer Congress also testified that there was damage to the bathroom window and opined that it was the possible entrance and exit of the suspect into and out of the house.

When viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could have found the essential elements of burglary proven beyond a reasonable doubt.

<b>107320</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANDRE QUINN			

Affirmed.

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

**KEY WORDS:** *Sufficient evidence; manifest weight of the evidence; felonious assault; aggravated assault; inferior-degree offense; mitigating circumstances; requisite state of mind; burden of proof.*

*Defendant's convictions for aggravated assault were supported by sufficient evidence and not against the manifest weight of the evidence where the state presented uncontroverted evidence from witnesses that defendant picked up a brick and hit two women with it in the head and elsewhere where their injuries were further confirmed by medical records. The defendant bears the burden of proving mitigating circumstances to mitigate a felonious assault to an aggravated assault; the state has no obligation to prove mitigating circumstances. Voluntary intoxication is not an affirmative defense to aggravated assault. An affirmative defense may not be raised for the first time on appeal.*

<b>107335</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LANDRA SHEARER			

Reversed and vacated.

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

**KEY WORDS:** *Sentence reversed; allied offenses; void; R.C.*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 10 of 13

(Case 107335 continued)

**2941.25; sentencing package doctrine; scope of remand.**

In a previous appeal, defendant's sentences were vacated as being allied offenses and the imposition of separate sentences on those counts violates R.C. 2941.25. The sentences are vacated and reversed, and the matter is remanded for a new sentencing hearing on the single count upon which the state elects to proceed to sentencing under *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381.

<b>107337</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID WITCHER			

Affirmed.

Mary Eileen Kilbane, A.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Guilty plea; sentence; consecutive; R.C. 2929.14; R.C. 2953.08; jointly recommended sentence.*

**Judgment affirmed.** *Defendant's sentence was authorized by law as it was jointly recommended to range between 18 and 25 years. The court imposed a sentence of 19 years. Because defendant's sentence fits within the three criteria under R.C. 2953.08(D)(1), his sentence is not subject to appellate review and his sentence is affirmed.*

<b>107339</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
KATHRYN LOGAN REZNIK v OH CANON CONSTRUCTION, LLC, ET AL.			

Reversed and remanded.

Mary Eileen Kilbane, A.J., Frank D. Celebrezze, Jr., J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Arbitration agreement; motion to stay; motion to compel arbitration; R.C. 2711.02; R.C. 2711.03; hearing.*

**Judgment reversed and remanded for a hearing.** *The trial court's grant of defendants' motion to compel arbitration without a hearing was improper. A party may choose to move for a stay, petition for an order to compel arbitration, or seek both. A motion to compel arbitration and a motion to stay proceedings are separate and distinct procedures that serve different purposes. In enforcing motions to compel arbitration under R.C. 2711.03, the trial court must engage in a two-step process. First, the court is mandated to hold a hearing to determine whether the validity of the arbitration provision is in issue in the case at hand. Second, if the court finds this is an issue, "it shall proceed summarily to the trial." In the instant case, there was no discovery or evidence before the trial*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 11 of 13

(Case 107339 continued)

**court for it to adequately determine if the arbitration clause applies, even though there is a separate disputes provision stating that claims and disagreements shall be subject to legal proceedings in any court having jurisdiction over the matter. Defendants acknowledged this inconsistency in the contract.**

<b>107382</b>	BOARD OF TAX APPEALS	H	ADMIN APPEAL
SPIRIT MASTER FUNDING IX, LLC, ET AL. v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.			

Vacated and remanded.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Real property; tax valuation; total true value; R.C. 5713.03; rebuttable presumption; arm's-length transaction; Board of Tax Appeals.*

**Board of Tax Appeals acted unreasonably and unlawfully in concluding that taxpayer presented insufficient evidence to rebut the presumption that its purchase of commercial property at sale where taxpayer's appraiser testified that the lease enhanced sale price and sale price did not reflect unencumbered fee-simple value.**

<b>107416</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DARRYL W. WILLIAMS			

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Affirmed; sentencing review; R.C. 2929.11; R.C. 2929.12; R.C. 2953.08(A)(1); maximum sentence; knowing and voluntary plea.*

**The trial court, after accepting defendant's knowing and voluntarily entered guilty plea, expressly considered all that is required by law before imposing the sentence, and defendant agreed to serve the sentence consecutively thereby relieving the court to make the required findings under R.C. 2929.14(C)(4).**

<b>107432</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
LAURA PETRUZIELLO, ET AL. v ARIS TELERADIOLOGY PROFESSIONAL CORP., ET AL.			

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 12 of 13

Affirmed and remanded.

Kathleen Ann Keough, J., Patricia Ann Blackmon, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Civ.R. 59; new trial; manifest weight; abuse of discretion.*

*Trial court did not abuse its discretion in granting plaintiffs' motion for a new trial pursuant to Civ.R. 59 where the manifest weight of the evidence did not support the jury's verdict that the defendant acted within the standard of care. The trial court's determination that insufficient credible evidence existed supporting the verdict was within its discretion.*

<b>107450</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAMES RAY			

Affirmed.

Kathleen Ann Keough, J., Patricia Ann Blackmon, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Substitute counsel; Sixth Amendment; breakdown in attorney-client relationship; abuse of discretion; consecutive sentences; R.C. 2929.14(C)(4); affidavits.*

*Trial court did not abuse its discretion in not appointing substitute counsel for defendant where the defendant did not demonstrate a breakdown in the attorney-client relationship that would prevent appointed counsel from representing him in keeping with his Sixth Amendment rights; trial court made the required findings under R.C. 2929.14(C)(4) to impose consecutive sentences; appellate court could not consider affidavits attached to appellant's brief that were not part of the trial court record.*

<b>107600</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.G.			

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Indian child; Indian Child Welfare Act; 25 U.S.C. 1912(a); notice; 25 C.F.R. 23.111(c); certified mail; 25 U.S.C. 1912(f); serious emotional or physical damage; qualified expert; case plan; R.C. 2151.412(E)*

*The record was sufficient to establish compliance with the ICWA notice requirements, and the trial court's decision to terminate parental rights and award permanent custody of the child to the agency was supported by competent, credible evidence. The*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 13 of 13

(Case 107600 continued)

evidence in this matter, which included the testimony of a qualified expert witness and the social worker of record, constituted a sufficient basis for the court to find “beyond a reasonable doubt that the continued custody of the parents would likely result in serious physical or emotional damage to the child” as required by 25 U.S.C. 1912(f). The record also demonstrated that the court approved the case plan when committing the child to the temporary custody of the agency.

<b>107648</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: L.W., ET AL.			

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Permanent custody; R.C. 2151.419(A); reasonable efforts; R.C. 2151.414(B)(1)(d); R.C. 2151.414(E); reasonable time; R.C. 2151.414(D); best interest; manifest weight; competent, credible evidence.*

*The juvenile court’s decisions awarding permanent custody of each child to the children services agency and terminating appellant’s parental rights were affirmed. A reasonable efforts determination was made at a prior hearing, and the children services agency presented evidence at the permanent custody hearing of the case plan services that were provided and of mother’s and father’s failure to complete portions of their case plans. The juvenile court’s determinations under R.C. 2151.414 were supported by competent, credible evidence and were not against the manifest weight of the evidence.*

<b>107708</b>	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE: L.W., ET AL.			

Affirmed.

Eileen T. Gallagher, P.J., Sean C. Gallagher, J., and Michelle J. Sheehan, J., concur.

**KEY WORDS:** *Parental rights; permanent custody; reasonable time; custody; best interest; guardian ad litem; report; abuse of discretion; continuance; case plan; visitation; substance abuse; housing; secure.*

*The trial court did not abuse its discretion in determining that permanent custody of the children should be awarded to CCDCFS. The trial court did not abuse its discretion in conducting the permanent custody hearing just three days after the GAL report was filed in violation of Sup.R. 48 and Loc.R. 18 of the Cuyahoga County Court of Common Pleas, Juvenile Division.*