

April 27, 2023

**111562** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ERIC HEAD

Affirmed in part, reversed in part, and remanded.

Michelle J. Sheehan, J., Frank Daniel Celebrezze, III, P.J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Aggravated murder; R.C. 2903.02(B); aggravated burglary; sufficiency of evidence; felonious assault; trespass; self-defense; duty to retreat; allied offenses of similar import.*

*Defendant was tried on charges that he killed the victim in the victim's home with a hammer. Defendant claimed he acted in self-defense. Defendant was found guilty of aggravated murder in violation of R.C. 2903.02(B), murder, aggravated burglary, and felonious assault after trial. The trial court determined that the charges of aggravated murder and murder were allied offenses of similar import and sentenced defendant on the charges of aggravated murder, aggravated burglary, and felonious assault.*

*Defendant claimed on appeal that because he was a tenant in the victim's home, argued there was insufficient evidence for the jury to find the element of trespass necessary to support the charges of aggravated burglary and aggravated murder predicated on the commission of an aggravated burglary. Defendant stated his tenancy was created because he was allowed to stay in the victim's home in exchange for being a "butler." Defendant did not have a rental agreement, pay rent, or have keys to the victim's home. The law of trespass protects those in control of the premises, and there was sufficient evidence that defendant committed a trespass when he committed a violent offense against the homeowner. The trial court properly instructed the jury on trespass and did not err by refusing defendant's request that the jury be instructed on the law of tenancy. Further, the trial court did not err by declining to instruct the jury that defendant had no duty to retreat.*

*Defendant claimed that the trial court erred by sentencing him to allied offenses of similar import. The evidence supporting the element of trespass in the aggravated burglary charge was the commission of a violent offense against the homeowner. The offenses of aggravated burglary and aggravated murder should have been determined to be allied offenses of similar import. However, there was evidence to support a finding that defendant committed felonious assault with a separate animus and/or caused separate harm and the trial court did not err by sentencing defendant on the charge of felonious assault.*

## CASE DECISION LIST

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**111580** PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE ADOPTION OF: W. M.

Reversed and remanded.

Michael John Ryan, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Failure to comply with appellate rules, Loc.App.R. 3, App.R. 12, App.R. 16; petition for adoption; R.C. 3107.07(A) consent to adopt, failure to communicate with minor; clear and convincing evidence; manifest weight; abuse of discretion.*

*Trial court's decision that stepfather failed to show by clear and convincing evidence that father's failure to have contact with the child in the year preceding the filing of the adoption petition was without justifiable-cause was against the manifest weight of the evidence. Father failed to have more than de minimis contact with his child for several years preceding the filing of the adoption petition and the lack of communication and contact was not justifiable. The trial court's findings were not supported by the weight of the evidence.*

**111603** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE A.M.

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Shared parenting; residential parent for school purposes; guardian ad litem report; change in circumstances; best interest of the child; manifest weight of the evidence; abuse of discretion; modification of parenting time.*

*The juvenile court acted within its discretion when it found that it was in the best interest of the child to modify the designation of the residential parent for school purposes and the parenting time.*

**111618** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TANISHIA N. JOHNSON

Affirmed in part, reversed in part, and remanded.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Voluntary manslaughter; R.C. 2903.03(A); involuntary manslaughter; R.C. 2903.04(A); reckless homicide; R.C.*

(Case 111618 continued)

**2903.041(A); aggravated assault; R.C. 2903.12(A)(1); firearm specifications; R.C. 2941.141(A); R.C. 2941.145(A); motion for acquittal; Crim.R. 29; sufficiency of the evidence; manifest weight of the evidence; child witness; minor; competency; Evid.R. 601; plain error; ineffective assistance of counsel; Sixth Amendment; allied offenses; conceded error; Reagan Tokes Law; mootness.**

**We vacated the defendant's sentence for voluntary manslaughter based on a conceded error. The state conceded that the trial court erroneously sentenced the defendant on the voluntary-manslaughter count because the state had elected to proceed to sentencing on a different allied offense - involuntary manslaughter. The trial court was required to accept that choice, merge the offenses into a single conviction for involuntary manslaughter and then impose a sentence for that conviction. We remanded the case for resentencing on the correct count. The defendant's substantive challenge to the length of her sentence in light of the purposes of felony sentencing, and her constitutional challenge to the imposition of an indefinite sentence under the Reagan Tokes Law, are moot until she is resentenced.**

**We affirmed the conviction in all other respects. The finding of guilt on the involuntary-manslaughter count was supported by sufficient evidence and was not against the manifest weight of the evidence where - among other things - the defendant had admitted that she pulled the trigger of the gun, forensic tests showed that the gun was less than nine inches from the victim's chest when it discharged and a neighbor testified that he heard the gunshot in the midst of an argument loud enough to be heard from his nearby apartment. There was no plain error in the trial court's finding that the defendant's daughter - who was six years old at the time of trial - was competent to testify as a witness, because any error (if there was any) did not affect the outcome of the trial. The defendant's trial counsel was not ineffective when counsel did not object to the child's testimony because that decision was a strategy call; parts of the testimony supported the state's theory and other parts supported the defense theory.**

**In light of these holdings, the guilty verdicts underlying the defendant's sentence remain the law of the case and are not subject to review on remand.**

**111774** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MICHAEL R. SHIELDS v BUREAU OF WORKERS' COMPENSATION, ET AL.

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Sean C. Gallagher, J., concur.

**KEY WORDS: Workers' compensation claim; jury verdict for claimant; unreliable expert medical testimony; inadmissible expert medical testimony; inadequate review of medical records; insufficient medical history; Evid.R. 703; Evid.R. 705; hypothetical**

## CASE DECISION LIST

(Case 111774 continued)

questions; Evid.R. 611; leading questions; Evid.R. 702; weight of the evidence versus admissibility of the evidence; credibility and weight of expert's testimony are jury questions; Civ.R. 50; directed verdict; judgment notwithstanding the verdict; flow-through injury; proximate cause; competing medical expert opinions; Civ.R. 59; and motion for new trial.

The trial court did not err in admitting expert witness testimony where the issues raised by defense counsel related to the credibility of the doctor's opinion rather than the admissibility of the evidence. Where claimant introduced sufficient testimony to demonstrate proximate cause of his flow-through injury, the trial court did not err when it denied defendant-appellant's motions for directed verdict and judgment notwithstanding the verdict. Likewise, the trial court did not abuse its discretion when it denied RTA's motion for new trial pursuant to Civ.R. 59(A)(6), and the trial court did not err when it denied RTA's motion for new trial under Civ.R. 59(A)(7) and (9).

**111855** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MATTHEW R. TEGARTY

Affirmed.

Kathleen Ann Keough, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Rape; force; gross sexual imposition; Evid.R. 801; Reagan Tokes.*

*Defendant's convictions for forcible rape and gross sexual imposition were upheld. While a defendant cannot offer his prior statements under Evid.R. 801(D)(2)(a), the rule does not preclude him from relying on the statements when properly offered by the state and admitted by the court.*

**111896** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STACIE HALPERN, TRUSTEE OF THE STACIE HALPERN TRUST U/A JULY 11, 1989 v  
DEREK SMITH, ET AL.

Affirmed.

Sean C. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Summary judgment; de novo; breach of contract; specific performance; injunctive relief; right of first offer; right of first refusal; contract; matter of law; existence; meeting of the minds; material terms; material breach; notice; negotiations; good faith; damages; reasonable certainty; speculative.*

## CASE DECISION LIST

(Case 111896 continued)

**Affirmed the trial court's decision to grant summary judgment in favor of the defendants/appellees on the claims in the complaint for breach of contract, specific performance, and injunctive relief. The plaintiff/appellant had a right of first offer, not a right of first refusal, which is decidedly different. Upon applying ordinary contract principles, appellees were entitled to judgment as a matter of law. Although the parties entered a right of first offer agreement, they did not have a binding and enforceable contract for the sale of the property. Even if there was a breach of the right of first offer agreement, which required the parties to negotiate in good faith, summary judgment was warranted because damages were speculative and the claims otherwise failed.**

**111898** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ANSURI AMEEM

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS: Law-of-the-case doctrine; law of the case; dicta; obiter dictum.**

***Judgment affirmed. The trial court did not err when it denied defendant's motion to dismiss because this court's prior statements regarding defendant's Megan's Law classification and registration duties were not law of the case; they were dicta by which the trial court was not bound.***

**111953** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v BRANDON FISHER

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

**KEY WORDS: Reagan Tokes Law; constitutional; indefinite sentence.**

***The trial court's imposition of an indefinite sentence pursuant to the Reagan Tokes Law was not a violation of defendant-appellant's constitutional rights. No plain error existed where defendant-appellant's objected to the Reagan Tokes Law before the trial court.***

## CASE DECISION LIST

**112066** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: D.F.

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Clear and convincing evidence, best interest of the child, R.C. 2151.414(B), R.C. 2151.414(D), R.C. 2151.414(E), abandonment, R.C. 2151.011(C).*

**Judgment affirmed.** *The juvenile court did not abuse its discretion in granting CCDCFS's motion to modify the temporary custody order, award permanent custody to CCDCFS, terminate parental rights, and approve the modified case plan of permanent custody and adoption. Clear and convincing evidence supports the juvenile court's statutory findings under R.C. 2151.414(B), (D), and (E), which include abandonment amongst many other factors. Thus, the juvenile court properly concluded that permanent custody was in the best interest of the child.*

**112170** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE C.W.-H, ET AL.

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Parental rights; permanent custody; standing; due process; notice; continue; best interest; legal custody.*

**Clear and convincing evidence supported the juvenile court's decision granting permanent custody of the children to the agency. Legal custody was not proper because Mother withdrew her motion prior to the permanent custody trial. Mother lacked standing to raise whether Father's due process rights were violated. Motion to continue was properly denied because the motion for permanent custody was pending for approximately 18 months.**

**112186** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
AVALON TEST EQUIPMENT LEASING, INC. v EMERALD DESIGN & CONSTRUCTION, LLC

Affirmed in part, reversed in part and remanded.

Eileen A. Gallagher, P.J., Michael John Ryan, J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Accelerated appeal; breach of contract; settlement*

(Case 112186 continued)

**agreement; consent judgment; motion to dismiss; Civ.R. 12(B)(6); default judgment; Civ.R. 55; Civ.R. 12(A).**

In this accelerated appeal, we affirmed the denial of the defendant's Civ.R. 12(B)(6) motion to dismiss and reversed the default judgment that had been rendered in favor of the plaintiff. A settlement agreement is a binding contract, which may be enforced through a separate action for breach of contract notwithstanding that a trial court dismissed the underlying litigation with prejudice based on the settlement without retaining jurisdiction to enforce the agreement. It was an abuse of discretion for the trial court to grant a default judgment where it expressly gave the defendant a deadline to appear in the matter to avoid default and the defendant filed its Civ.R. 12(B)(6) motion before that deadline. Pursuant to Civ.R. 12(A)(2), the defendant should have been allowed 14 days to file its answer after the trial court denied the motion to dismiss.

**112209** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: E.J.

Affirmed.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS: Permanent custody; motion for legal custody; clear and convincing evidence; abuse of discretion.**

***The trial court's decision terminating appellant's parental rights was supported by clear and convincing evidence. The child could not be placed with appellant within a reasonable time or should not be placed with appellant. The appellant failed to remedy the conditions that led to the child's removal. The appellant was not successful in her case plan goals for substance abuse, mental health, or parenting. The record does not demonstrate that the appellant's self-medication with marijuana helped her with her mental health issues. The trial court's determination that permanent custody was in the best interest of the child was not an abuse of discretion. The child was bonded and doing well with the foster family, the only family the child has known. The GAL was of the opinion that removing the child from the foster family would be "catastrophic."***

***The trial court's denial of appellant's motion for legal custody to grandmother was not an abuse of discretion. The record demonstrates that grandmother did not demonstrate full commitment to the child's needs. Further, her plans to keep the child safe were undeveloped and unrealistic.***

***Because the juvenile court did not explicitly or solely base its decision to terminate appellant's parental rights on her mental health, there was no error in rendering its decision without the aid of expert testimony.***

***Implied in the juvenile court's dependency adjudication was an implicit finding of parent unsuitability, and therefore, there was no requirement of the juvenile court to make a separate unsuitability finding.***

## CASE DECISION LIST

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**112332** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE B.P., ET AL.

Affirmed.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

***KEY WORDS: Permanent custody; reasonable-efforts findings; best interests of the child; manifest weight; clear and convincing evidence; abuse of discretion.***

***Juvenile court was not required to make a reasonable-efforts finding when granting permanent custody of children to the Cuyahoga County Division of Children and Family Services where court previously made reasonable-efforts findings prior to granting permanent custody.***

***The judgment granting permanent custody of children to the Cuyahoga County Division of Children and Family Services, pursuant to R.C. 2151.414, was in the children's best interests because the mother failed to substantially remedy the conditions that caused the children's removal.***