

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**August 27, 2020**

**108765** BOARD OF TAX APPEALS E CIVIL C.P.-NOT JUV,DOM OR PRO  
HARRAH'S OHIO ACQUISITION COMPANY, LLC, ET AL., v  
CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

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

**KEY WORDS:** *Commercial appraisals; tax valuation; tax appeals; Board of Tax Appeals; reversible error; abuse of discretion.*

*The Board of Tax Appeals did not commit reversible error or abuse its discretion. The Board, on remand from the Ohio Supreme Court, considered each of the valuation approaches and issued its decision based on the comparison of the two separate appraisals.*

*Appellant's issues of concern for comparison of the differing appraisals were previously addressed by the Ohio Supreme Court and further, were not subject to the court's remand. Based on the Ohio Supreme Court's remand and the Board's review of the differing appraisals, the Board of Tax Appeals' determination was based on reliable and probative support.*

**108766** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
ADAM FRIED, ADMINISTRATOR, ET AL. v FRIENDS OF BREAKTHROUGH SCHOOLS, ET AL.

Reversed and remanded.

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

**KEY WORDS:** *Political Subdivision Tort Liability Act; R.C. Chapter 2744; Civ.R. 12(B)(6); de novo; intentional torts; negligence; political subdivision immunity; governmental function; proprietary function.*

*The trial court erred in denying defendant political subdivision's Civ.R. 12(B)(6) motion to dismiss based on R.C. 2744.02 immunity. There is no exception to political subdivision immunity for intentional torts. Plaintiffs-appellees failed to plead facts establishing that immunity from their negligence claims was barred by one of the enumerated exceptions in R.C. 2744.02(B). The political subdivision was engaged in a governmental function, and the injury did not occur on the political subdivision's property as a result of a physical defect in their property.*

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**108767** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
CHRISTINA CRUZ, ET AL. v ENGLISH NANNY & GOVERNESS SCHOOL, ET AL.

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *Remittitur; attorney fees; appellate attorney fees; economic damages; intentional infliction of emotional distress; lodestar; contingency-fee agreement.*

*Trial court on remand did not abuse its discretion by reinstating economic damages that had previously been remitted where evidence demonstrated that the jury's award of economic damages was supported by the evidence, was not excessive and because the plaintiff did not consent to remittitur in lieu of a new trial.*

*Trial court acted within its discretion in awarding seven-eighths of the plaintiffs' lodestar fee where evidence showed that only one factor weighed in favor of a reduction of the full lodestar amount.*

*Trial court abused its discretion in awarding attorney fees to co-counsel's firm where the record lacked evidence demonstrating that the work itemized in the attorney fee bill was necessary to the plaintiffs' success at trial or that the hourly rates were reasonable.*

*The trial court abused its discretion in awarding appellate attorney fees where plaintiffs' claims did not involve a remedial statute and appellate attorney fees are generally not recoverable.*

**108924** COMMON PLEAS COURT B CRIMINAL C.P. (DEATH PENALTY)  
STATE OF OHIO v ANTHONY C. APANOVITCH

Affirmed.

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

**KEY WORDS:** *Crim.R. 33; motion for new trial; newly discovered evidence; stipulation; postconviction petition.*

*The parties' stipulation that Crim.R. 33 applied to the postconviction petition and the trial court should rely on that rule in deciding the postconviction petition did not relieve defendant of the burden of seeking leave to file his untimely Crim.R. 33 motion for a new trial on the basis of newly discovered evidence; trial court therefore did not abuse its discretion in denying the motion.*

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<b>108971</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
MARIO D. BLUE v CHELSEA T. MURRAY			

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Civ.R. 12(B)(6); Loc.App.R. 23; breach of contract; identity theft; invasion of privacy.*

*Dismissal of plaintiff-appellant's claims for failure to state a claim upon which relief can be granted was appropriate where the complaint did not allege facts sufficient to support his claims.*

<b>109067</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v B.K.			

Affirmed.

Mary Eileen Kilbane, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

**KEY WORDS:** *Sealing of convictions; R.C. 2953.31; eligible offender.*

*Trial court's denial of defendant-appellant's application to seal four convictions is affirmed. Defendant-appellant was not an eligible offender because he had two third-degree felony convictions, one fourth-degree felony conviction, and one fifth-degree felony conviction; the convictions did not result from and were not connected to the same act; the convictions did not occur at the same time, but on three different days over the span of five months; and the separate acts occurred at different locations.*

<b>109100</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RANDY COTTINGHAM			

Affirmed.

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

**KEY WORDS:** *Sufficiency of evidence; manifest weight of evidence; Crim.R. 14; separate trials; simple and direct; other acts evidence; juvenile record; consecutive sentences.*

*Defendant's convictions for aggravated burglary, aggravated robbery, kidnapping, theft, improperly discharging a firearm into a habitation, and felonious assault were supported by sufficient*

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evidence and not against the manifest weight of the evidence; the trial court did not abuse its discretion in denying the defendant's Crim.R. 14 motion for separate trials because the evidence relating to the separate incidents was simple and direct; other acts evidence was not improperly admitted at trial because the state's evidence of the separate criminal acts was evidence regarding the very crimes the defendant was charged with committing; the defendant's testimony about his life history allowed the state to question him about his juvenile record; the trial court properly imposed consecutive sentences because it made the requisite statutory findings under R.C. 2929.14(C) and incorporated those findings into the journal entry of sentencing.

**109289** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE GUARDIANSHIP OF THOMAS J. CALVEY

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *R.C. 2323.51 and Civ.R. 11/motion for sanctions; Rule 66(A) of the Rules of Superintendence; magistrate's decision; plain error.*

*Respondent-appellant failed to establish that either applicant-appellee's counsel or applicant-appellee engaged in frivolous conduct, and further failed to establish that applicant-appellee violated the Rules of Superintendence. The trial court did not err adopting the magistrate's decision.*

**109299** PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE ESTATE OF SARUNAS V. ABRAITIS

Affirmed.

Eileen A. Gallagher, J., Larry A. Jones, Sr., P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *R.C. 2109.33; exceptions to final account; standing; person interested in estate; direct pecuniary interest; R.C. 2101.24; subject matter jurisdiction of probate court.*

*Former executor of estate lacked standing to file exceptions to final account where she had no direct pecuniary interest in the estate. Probate court had subject matter jurisdiction over matters at issue.*