

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 15, 2021

**109745** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE J.C.

**109746** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE G.C.

Affirmed.

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

**KEY WORDS:** *Substantial change in circumstances; R.C. 3119.79(A); child support; R.C. 3119.04(B); repayment; federal tax exemption.*

*Trial court properly found there was a substantial change in circumstances under R.C. 3119.79(A) to warrant modification of Mother's child support obligation; trial court did not abuse its discretion in (1) modifying Mother's child support obligation to \$0 where the court found the modification was in the best interest of the children; (2) ordering Father to repay Mother child support she paid after she filed her motion to modify; and (3) ordering that the parties were to share the federal tax exemptions for the parties' two children.*

**109747** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE J.C.

**109748** JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE  
IN RE G.C.

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *Child support modification; federal tax credits; R.C. 3119.32.*

*The trial court erred, and the appellant was entitled to have the child support modification and the federal tax credits relate back to the date the motion to modify was filed. The trial court abused its discretion by not awarding the appellant child support. The trial court erred by failing to designate the appellant as the obligee. The trial court did not err by failing to list the specific provisions for regular, holiday, vacation parenting time, and special visiting, as the previous parenting schedule was not modified and was incorporated into the journal entry. The trial court failed to designate the appellant responsible for health care insurance of the children. The trial court failed to properly order health care expenses under R.C. 3119.32.*

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**109815** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE

K.M.M. v A.J.T.

Affirmed.

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

**KEY WORDS:** *Contempt; shared-parenting plan; visitation; parenting time; abuse of discretion; prima facie case; attorney fees; R.C. 3109.051(K).*

*A trial court does not abuse its discretion when it finds that a prima facie case has not been established for contempt when a mother made reasonable efforts to encourage her child to visit with his father, the teenage child independently refuses to go, and father contributed to or cause his lack of parenting time. Because the trial court did not hold mother in contempt, it was proper not to award attorney fees to father on his contempt claim.*

**109845** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO

N.E. MONARCH CONSTRUCTION, INC. v MORGANTI ENTERPRISE, INC., ET AL.

Reversed in part and remanded.

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

**KEY WORDS:** *Motion to compel discovery, privileged material.*

*Trial court's order compelling discovery without addressing a claim that the order encompassed production of privileged material without holding a hearing or conducting an in camera inspection was error.*

**109850** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE

JIMMY STORY v VERONICA STORY

Affirmed.

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

**KEY WORDS:** *Motion to modify child support; parental obligation to support minor child; R.C. 3103.03; R.C. 3109.05(A)(1); Title IV-D; due process; App.R. 16(A)(7); vexatious litigator; Loc.App.R. 23.*

*Based on R.C. 3103.03, R.C. 3109.05(A)(1) and the substantial case law interpreting and applying those provisions, a parent has a legal obligation to support his or her minor children under Ohio law. A*

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(Case 109850 continued)

parent's legal obligation to pay child support is not a matter of contract and is not governed by the Uniform Commercial Code. Child support order was not void because state receives funding under Title IV-D in exchange for providing services related to the establishment, modification and enforcement of child support obligations. Father did not show that any due process violations occurred. Record did not support finding that father had "habitually, persistently, and without reasonable cause" engaged in "frivolous conduct" so as to warrant a declaration that he is a vexatious litigator under Loc.App.R. 23(B).

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| <b>109897</b>                 | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v CARLIN POWELL |                    |   |               |

Affirmed.

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

**KEY WORDS:** *Crim.R. 33(B); motion for leave to file motion for new trial; newly discovered evidence; reasonable diligence.*

*Appellant sought leave to file a motion for new trial based upon newly discovered evidence. The motion was filed outside the 120-day time limit in Crim.R. 33(B). The facts and exhibits submitted as being newly discovered in support of the motion for leave were available prior to the expiration of the 120-day time limit and could have been discovered with reasonable diligence. Accordingly, the trial court did not abuse its discretion by denying leave to file a motion for new trial without conducting a hearing.*

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| <b>109945</b>                         | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v KENNETH M. WHITE, JR. |                    |   |               |

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, A.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Reagan Tokes Law; constitutionality.*

*Appellate court declined to consider criminal defendant's constitutional challenges to the Reagan Tokes Law where the defendant forfeited his constitutional challenges by not raising any objection to the law in the trial court; discretionary plain error analysis not exercised where as part of the plea agreement defendant agreed to the sentencing range he now challenged.*

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| <b>109969</b> | JUVENILE COURT DIVISION | F | CIVIL C.P.-JUV, DOM, PROBATE |
| IN RE G.C.    |                         |   |                              |

Vacated.

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

**KEY WORDS:** *Civ.R. 60(B) motion; notice of appeal; appeal divests trial court's jurisdiction.*

*After appellee filed her notice of appeal, the trial court was divested of jurisdiction to consider appellant's subsequent Civ.R. 60(B) motion for relief from the appealed judgment, making its ruling on the 60(B) motion null and void.*

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| <b>109992</b>                               | GARFIELD HTS. MUNI. | C | CRIMINAL MUNI. & CITY |
| CITY OF BRECKSVILLE v SHIREEN D. SADAGHIANI |                     |   |                       |

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Ineffective assistance of counsel; speedy trial; venue; Evid.R. 803(6); business records; hearsay; trial strategy; sufficiency of evidence; manifest weight of evidence; making a false alarm; aggravated menacing; telecommunications harassment; Evid.R. 404(B); other acts evidence.*

*Defendant's convictions for making a false alarm, aggravated menacing, and telecommunications harassment were supported by sufficient evidence and not against the manifest weight of the evidence. Defense counsel was not ineffective for not objecting (1) on speedy trial grounds where the case was timely brought to trial; (2) to subpoenaed business records where the records were authenticated and properly admitted under Evid.R. 803(6); and (3) to hearsay testimony where the decision not to object was a trial strategy. Venue was properly established. The trial court did not abuse its discretion in admitting other acts testimony because it was admitted for the purpose of establishing the defendant's identity; the city's failure to give formal notice of its intent to use other acts evidence under Evid.R. 404(B) was not reversible error where there was no bad faith and the testimony to which the defendant objected was disclosed in a police report prior to trial.*

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**110049** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
T.V. v R.S.

Affirmed.

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

**KEY WORDS:** *Civil stalking protection order; R.C. 2903.211; sufficiency of evidence; manifest weight of the evidence; pattern of conduct; fear of harm; mental distress; photographs; text messages; authenticated; admissible.*

*Trial court's judgment granting a civil stalking protection order affirmed where the evidence was sufficient to demonstrate that respondent engaged in a pattern of conduct against the petitioner that caused her to believe he would physically harm her and, as a result she suffered mental distress; two missing photographs from a screenshot of texts sent to the petitioner by the respondent may have affected the evidentiary weight of the exhibit but did not affect its admissibility where the exhibit was properly authenticated.*

**110076** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v GEORGE ALLEN COLE

Affirmed.

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

**KEY WORDS:** *Petition for postconviction relief; credibility; affidavits.*

*Considering the totality of the evidence presented at trial and the claims advanced by the codefendants through affidavits attached to a petition for postconviction relief, the trial court did not abuse its discretion in finding affidavit to be inherently incredible without conducting a hearing.*

**110099** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
STATE OF OHIO v RICARDO GRAY

Affirmed.

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

**KEY WORDS:** *Petition for postconviction relief; successive; untimely; res judicata.*

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(Case 110099 continued)

**Trial court did not abuse its discretion in denying defendant's successive and untimely petition for postconviction relief because the defendant failed to demonstrate that he was unavoidably prevented from discovering the evidence used to support his petition. The evidence was cumulative to prior evidence or was known to the defendant at the time of trial, on direct appeal, or in his first petition for postconviction relief. Res judicata would also bar the petition for the same reasons.**

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| <b>110104</b>                    | COMMON PLEAS COURT | E | CIVIL C.P.-NOT JUV, DOM OR PRO |
| MARY ELLEN WOLF v GREGORY KAPLAN |                    |   |                                |

Affirmed.

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

**KEY WORDS:** *Summary judgment; assault; battery; gross negligence; negligence; triathlon; bicycling; cycling; accident; crash; collision; conduct; contact; rule; violation; waiver; assumption of risk; reckless; intentional; anticipated; foreseeable; customary; inherent; intrinsic; sport.*

**Affirmed the trial court's decision to grant summary judgment in favor of defendant on claims for assault, battery, gross negligence, and negligence arising from a bicycle crash during a triathlon event. The alleged conduct presented a foreseeable and customary risk in the sport of triathlon, the doctrine of primary assumption of the risk applied, and, as a matter of law, the alleged conduct could not be found intentional or reckless. The alleged conduct was not outside of the range of ordinary activity involved in the sport of triathlon, was anticipated by the customs and practices of the sport, was reasonably foreseeable, and presented a risk of injury inherent in the sport. A rule violation in itself is an insufficient basis by which to attach liability, and the facts and circumstances of the particular case must be considered. There was an absence of evidence demonstrating the injury arose out of conduct that was not truly an intrinsic part of the competitive sport of triathlon.**

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| <b>110130</b>        | JUVENILE COURT DIVISION | F | CIVIL C.P.-JUV, DOM, PROBATE |
| IN RE: T. B., ET AL. |                         |   |                              |

Affirmed.

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

**KEY WORDS:** *Permanent custody; R.C. 251.414(B)(1); best interest; clear and convincing evidence; CCDCFS.*

**Trial court's judgment granting permanent custody of two children**

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(Case 110130 continued)

**to CCDCFS was not against the manifest weight of the evidence because the record contained clear and convincing evidence that permanent custody was in the best interest of the children and they cannot be returned to either parent within a reasonable time or should not be returned to them, thus satisfying the two-prong test set forth in R.C. 2151.414(B).**