

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 8, 2020

**107956** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v KEYON SMITH

Affirmed.

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

**KEY WORDS:** *Remand; polygraph; ineffective assistance of counsel; sentencing; clearly and convincingly standard.*

*This cause is on remand from the Ohio Supreme Court. In Smith I, Smith argued in his first assignment of error that his guilty plea should be vacated. We agreed, based on our precedent, and did not address his remaining two assignments of error. The Supreme Court reversed our ruling and ordered this court to address the remaining assignments of error.*

*Smith argued that the trial court abused its discretion in using polygraph results in his sentencing and that his counsel was ineffective for failing to object to their use. We found that the court did not use polygraph results in its sentencing and so Smith was not prejudiced.*

*Smith also argued that his sentence was too harsh and that he could have received a lesser sentence. The court found that Smith did not show remorse and that his sentence - which was within the statutory guidelines - was adequate to punish him for his crime. We did not find any error with the court's sentencing.*

**108839** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
PROFESSIONAL SOLUTIONS INSURANCE COMPANY v NOVAK LLP, ET AL.

Affirmed in part, vacated in part, and remanded.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Legal malpractice; enforceability of attorney fees; adhesion contract; unequal bargaining power; attorney fee-shifting provision; Civ.R. 15(B); motion to amend pleadings; Civ.R. 59; motion for new trial; authentication of business records; Civ.R. 49(B); narrative jury interrogatories; jury interrogatories inconsistent with the verdict; Civ.R. 48; juror misconduct; R.C. 1776.36(C); Civ.R. 12(C); partner liability; supersedeas bond; Civ.R. 62.*

*In a breach of contract claim, an attorney fee-shifting provision was unenforceable where the provision was incorporated into an adhesion contract that represented unequal bargaining power between the parties. Defendant-appellant/cross-appellee was not*

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entitled to a motion to amend pleadings under Civ.R. 15(B) because the trial evidence could not sustain the proposed cause of action. Despite alleged misconduct or improper comments of plaintiff-appellee/cross-appellant's counsel, no prejudice resulted to the defendant-appellant/cross-appellee and competent, credible evidence supported the verdict. Therefore, the trial court did not err when it denied defendant-appellant/cross-appellee's motion for a mistrial and/or a new trial under Civ.R. 59. The trial court properly allowed the introduction of business records that were authenticated under Evid.R. 803(6). The trial court did not err when it rejected the use of narrative jury interrogatories on the basis that they were confusing. The alleged inconsistency between a juror's answer to the general verdict and jury interrogatories was moot since the general verdict reflected a decision of more than three-fourths of the jury. The trial court did not abuse its discretion when it denied a motion for new trial where there was no basis for defendant-appellant/cross-appellee's allegations of juror misconduct. A review of the insurance policy supported the trial judge's determination that the partners were not insureds under the terms of the policy. Accordingly, the partners were not personally liable for the deductible under the policy or per R.C. 1776.36(C) and the court did not err when it granted defendant-appellant/cross-appellee's partial Civ.R. 12(C) motion on that issue. Absent any indication that defendant-appellant/cross-appellee had the financial means to satisfy the judgment, the trial court erred when it granted a stay of execution without a bond.

<b>109049</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DIMITRIUS ANGLIN			

Affirmed.

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

**KEY WORDS:** *Rape; attempted rape; lesser offense; penetration; sufficiency of the evidence; manifest weight; credibility of the witnesses.*

*Defendant's conviction for attempted rape was supported by the sufficiency of the evidence where the physical evidence supported contact with the victim's vaginal region and the defendant denied penetration. Defendant's conviction was not against the manifest weight of the evidence because defendant denied penetration occurred during the sexual assault and the testimony of the witnesses supported a conviction of attempted rape.*

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<b>109098</b>	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v G.W.			

Reversed and remanded.

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

**KEY WORDS:** *Seal records; eligible offender; statutory construction.*

*Trial court erred in finding that applicant was not an “eligible offender” for purposes of sealing criminal records where applicant had two convictions resulting from the same information, the same plea hearing, and the two convictions resulted from acts committed within a three-month period of time.*

<b>109167</b>	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v THOMAS C. PATTERSON			

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *R.C. 2925.03(A)(2), drug trafficking, R.C. 2929.18(B)(1), mandatory fine, ineffective assistance of counsel, R.C. 4511.19(A)(2)(A), driving under the influence, R.C. 2921.33, resisting arrest, R.C. 2929.11, purposes and principles of felony sentencing, R.C. 2929.12, sentencing factors, postrelease driver’s license suspension.*

*The prison term imposed is within the statutory guidelines and is not contrary to law. The record reflects that the trial court considered the principles and purposes of felony sentencing and the sentencing factors under R.C. 2929.11 and 2929.12. Defense counsel was ineffective for failure to file an affidavit of indigence and request that the trial court waive the fine, particularly where counsel made no attempt to file the affidavit prior to sentencing or in response to the trial court’s directive at sentencing that counsel file a proper motion. The record supports a reasonable possibility that waiver may have been granted. The trial court’s imposition of a five-year driver’s license suspension to take effect upon the defendant’s release from prison is not contrary to law.*

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<b>109201</b>	PARMA MUNI. CITY OF PARMA v JAMES LONG, JR.	C	CRIMINAL MUNI. & CITY
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Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Driving under suspension; obstructing official business.*

*The police officer was permitted to check appellant driver's license plate even though the officer had no reasonable suspicion that the driver was involved in criminal activity and, once the officer learned the vehicle's license plate was suspended, the officer had reasonable suspicion to stop the vehicle to investigate the driver's offense of driving under suspension. Appellant's convictions of driving under suspension and obstructing official business are affirmed.*

<b>109203</b>	COMMON PLEAS COURT DEBBIE GODWIN v FACEBOOK, INC., ET AL.	E	CIVIL C.P.-NOT JUV, DOM OR PRO
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Affirmed.

Sean C. Gallagher, J., and Mary J. Boyle, P.J., concur; Patricia Ann Blackmon, J., concurs with separate concurring opinion.

**KEY WORDS:** *Civ.R. 12(B)(6); motion to dismiss; negligence; special relations; duty; Restatement of Torts; making terroristic threat; R.C. 2909.23; civil liability for criminal conduct; R.C. 2921.22; R.C. 2307.60; well-pleaded complaint.*

*The plaintiff has not stated a negligence claim upon which relief could be granted in order to impose liability for a social media corporation's alleged nonfeasance and failed to allege facts demonstrating a prima facie case that the defendant failed to report a terroristic threat, and therefore, the trial court did not err in dismissing the complaint under Civ.R. 12(B)(6).*

<b>109355</b>	JUVENILE COURT DIVISION IN RE O.P.	F	CIVIL C.P.-JUV, DOM, PROBATE
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Reversed and remanded.

Anita Laster Mays, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

**KEY WORDS:** *Juv.R. 10(A), R.C. 2725.01, writ of habeas corpus,*

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**legal custody award to nonparent, suitability, best interest.**

**The trial court failed to make specific findings of unsuitability of the parent and best interest of the child to support the legal award of custody to the appellees.**