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Ohio Fifth District Court of Appeals Case Summaries

Case Type	Case Caption	Case No(s)	Character of Proceeding	Judgment	Topics and Issues	Author	Date of Judgment Entry
Criminal	STATE VS. GARRICK MORRIS	Case No. 2024 CA 00011	Appeal from the Fairfield County Court of Common Pleas, Case No. 2021 CR 00500	Affirmed	Manifest weight; prosecutorial misconduct Garrick Morris appealed his conviction and sentence, arguing that it was against the manifest weight of the evidence. The appellate court reviewed the record and found the victim's testimony and the forensic nurse's findings credible, concluding that the evidence of sexual abuse was clear.	Baldwin, P.J.	3/25/2025
Criminal	STATE VS. KESSLER	Case No. 2023CA0007	Appeal from the Morrow County Court of Common Pleas, Case No. 22-CR-0091	Affirmed	Sexual battery; gross sexual imposition; failure to record; trial court/jury questions; other acts evidence; manifest weight; sufficiency of evidence; ineffective assistance of counsel; cumulative error Jay Kessler appealed his conviction and sentence, arguing they were against the manifest weight of the evidence and unsupported by sufficient evidence. The Court of Appeals concluded that the jury did not lose its way in finding the victims' testimonies credible.	Hoffman, P.J.	3/25/2025
Criminal	STATE VS. DENNIS MAY, JR.	Case No. 24-COA-022	Appeal from the Ashland County Municipal Court, Case No. 23CRB01261	Affirmed	Delayed request for jury trial; ineffective assistance of counsel May, Jr. appealed his assault conviction, arguing the trial court wrongly denied his late request for a jury trial and that he received ineffective assistance of counsel. However, he did not object to the bench trial or seek a trial delay. The evidence showed he repeatedly struck a developmentally disabled victim, causing severe facial injuries, including a fractured orbital bone and a laceration requiring 22 stitches. The victim testified to ongoing blurred vision. Judgement affirmed.	Baldwin, P.J.	3/24/2025
Criminal	STATE VS. RICHARD MASON, JR.	Case No. 2025 CA 00002	Appeal from the Fairfield County Municipal Court, Case No. TRC 2405062	Reversed	Evidence; OVI The State of Ohio appealed a trial court ruling that barred evidence of Richard Mason's prior OVI convictions. The appellate court reversed the decision, agreeing with the State that proving two prior OVI convictions is necessary both to elevate the charge and to justify increased penalties. The case is remanded for further proceedings consistent with this ruling.	King, J.	3/25/2025
Criminal	STATE VS. CHARLES WATSON, JR.	Case No. CT2025-0002	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2024-0214	Affirmed	Motion for resentencing was a petition for post-conviction relief despite caption; Res judicata Charles Watson, Jr. appealed the denial of his motion for resentencing. Appellant's motion constituted a petition for post-conviction relief. Appellant's motion satisfied the definition of a petition for post-conviction relief as defined in R.C. 2953.21. However, the appellant failed to raise the issues on direct appeal; therefore, it was barred by res judicata.	Hoffman, J.	3/26/2025
Criminal	STATE VS. BRECK RICHMOND	Case No. 24CA000030	Appeal from the Guernsey County Common Pleas Court, Case No. 21- CR-388	Remanded with instructions	Sentencing; consecutive sentences; findings on the record to impose consecutive terms; sentencing entry Richmond appeals his 27-month prison sentence imposed after violating community control terms. Originally given community control, he failed to comply over three years, reengaged in drug-related activities, and was deemed likely to reoffend. The trial court imposed consecutive sentences, meeting statutory requirements, and provided thorough reasoning during sentencing. However, because the court's sentencing entry did not explicitly include the required statutory findings under R.C. 2929.14(C)(4), the case is remanded for the limited purpose of issuing a "nunc pro tunc" entry to properly document those findings in the judgment.	Montgomery, J.	3/27/2025
Criminal	STATE VS. GAYRAT ABAEV	Case No. 24 CAC 040019	Appeal from the Delaware County Municipal Court, Case No. 23 TRC 07423	Affirmed	Motion to suppress; OVI; R.C. 4511.19(D)(4)(b); field sobriety test; HGN test; substantial compliance; NHTSA standards; Google Translate Gayrat Abaev appealed the trial court's decision, arguing that it erred by not suppressing the Horizontal Gaze Nystagmus (HGN) test due to Trooper Church's reliance on Google Translate for instructions and alleged noncompliance with National Highway Traffic Safety Administration (NHTSA) standards. The Court of Appeals found clear and convincing evidence that the test was administered in substantial compliance with NHTSA guidelines. While an interpreter's testimony may have been preferable, the court noted that circumstantial evidence carries the same weight as direct evidence. Abaev's near perfect compliance with instructions, as shown in dash and body camera footage, supported the reliability of the translation. Though Trooper Church corrected Abaev once for head movement, the footage showed no further significant deviations. The court also deemed the trooper's failure to ask medical screening questions a minor procedural issue that did not warrant suppression. Affirming the trial court's decision, the court concluded that the test was properly administered and the evidence supported Trooper Church's testimony.	Hess, J.	3/28/2025

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Criminal	STATE VS. MARK A VOHS	Case No. 2024CA0020	Appeal from the Coshocton County Court of Common Pleas, Case No.2024 CR 0002	Affirmed	Anders; guilty plea Mark A. Vohs pled guilty in Coshocton County to a second-degree felony charge of aggravated possession of drugs and received an indefinite prison sentence of six to nine years, which was jointly recommended as part of his plea agreement. Despite filing an untimely appeal, Vohs was granted a delayed appeal. His appointed appellate counsel filed an Anders brief, asserting no meritorious grounds for appeal. The Court of Appeals independently reviewed the record and found the appeal frivolous. The court determined that the trial judge had properly conducted the plea hearing under Criminal Rule 11(C), ensuring Vohs understood the nature of the charge, the maximum penalties, and the effect of his guilty plea. The court also confirmed that Vohs knowingly and voluntarily waived his constitutional rights. Additionally, the sentence imposed was within the statutory range for a second-degree felony, complied with all mandatory sentencing provisions, and reflected the parties' joint recommendation. Finding no basis for reversal, the Court of Appeals affirmed the trial court's judgment and granted counsel's motion to withdraw.	Gromley, J.	3/28/2025
Criminal	STATE VS. UNDRAY BENEFIELD	Case No. 2024CA00067	Appeal from the Stark County Court of Common Pleas, Case No. 2023 CR 1603	Affirmed	Motion to suppress; regulatory compliance of blood draw Undray Benefield appealed the trial court's denial of his motion to suppress blood draw results following a fatal crash. The Court of Appeals found that Benefield's motion only made general claims of non-compliance without specific facts. The appellee presented testimony showing substantial compliance with the relevant regulations. Benefield raised more specific arguments only after the close of evidence. The court ruled that the appellee was required to show only substantial compliance, which it did, and found no prejudice to Benefield. Judge Hoffman, in dissent, argued that the general claims were sufficient given the lack of available facts and that the State failed to comply with regulations regarding the antiseptic used, suggesting the motion to suppress should have been granted.	Baldwin, P.J.	3/28/2025
Criminal	STATE VS. THOMAS L. SHARRER	Case No. CT2024-0116	Appeal from the Muskingum Court of Common Pleas, Case No. CR2024-0369	Affirmed	Domestic violence; jury instruction; lesser included offense; manifest weight of the evidence; ineffective assistance of counsel Tom Sharrer appealed his domestic violence conviction, arguing the court erred by not instructing the jury on the lesser-included charge of disorderly conduct. He claimed he acted in self-defense after Deanna struck him and that others escalated the situation. However, evidence showed Sharrer, who was intoxicated, initiated the conflict by knocking a fork from Deanna's hand and acting erratically. Despite efforts to calm him, he struck Deanna with such force that she became unresponsive. The court found his self-defense claim unsupported, and the Court of Appeals affirmed his conviction, rejecting his assignments of error.	Montgomery, J.	3/27/2025
Domestic Relations	BARRY C. KOHN VS. PEGGY A. KOHN	Case No. 24 CAF 07 0047	Appeal from the Delaware County Court of Common Pleas, Domestic Relations Division, Case No. 17 DR B 09 0530	Affirmed	Motion to modify/terminate spousal support due to retirement- denied Kohn appeals the decision denying his motion to modify or terminate spousal support. Following his retirement, he argued that the change in circumstances warranted termination under the terms of the divorce decree. The trial court acknowledged his retirement as a qualifying change but found that it did not automatically mandate termination. After evaluating the statutory factors, including the parties' incomes and financial circumstances, the court determined the existing support order remained reasonable and appropriate. Kohn failed to demonstrate that the trial court abused its discretion in denying his motion.	King, J.	3/25/2025
Domestic Relations	CARRIE EFFINGER VS. JEFFREY EFFINGER	Case No. 2024CA00092	Appeal from the Stark County Court of Common Pleas, Case No. 20DR00603	Affirmed	Civ.R. 60(B) Husband appeals the denial of his motions for relief from judgment and to divide the mortgage, arguing that the 2021 Divorce Decree was not a final appealable order since it did not explicitly address the mortgage. The court disagrees, ruling that the decree and separation agreement implicitly assigned the mortgage debt to Husband. Wife's obligation was discharged in bankruptcy, and Husband received legal title subject to the mortgage. Since Husband failed to appeal the decree directly and waited a year before filing his motion, his claims are barred by res judicata. The trial court did not abuse its discretion in denying his motion.	Hoffman, J.	3/27/2025
Domestic Relations	EDDIE HORN VS. JACKLYN KIMBLETON				Failure to file objections to magistrate's decision; plain error review of modification of parental rights Kimbleton appeals the trial court's decision modifying parental rights and naming Horn as the legal custodian and residential parent of their child. She argues the court erred by failing to explicitly state a "change in circumstances" and by determining the custody modification was in the child's best interest. Because Kimbleton did not object to the magistrate's decision, the court's review was limited to plain error. The court found no plain error, citing evidence of inappropriate photos on the child's tablet, reports of sexual misconduct involving the child, and Kimbleton's failure to provide adequate supervision or comply with court orders. The trial court's decision was affirmed.		

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Civil	PNC BANK NATIONAL ASSOCIATION SUCCESSOR BY MERGER VS. JEFF WHITAKER, ET AL.	Case No. 2024 CA 00021	Appeal from the Fairfield County Court of Common Pleas, Case No. 2019 CV 00235	Affirmed	Summary judgment; motion to strike; authentication; affidavit; breach of contract; RESPA; damages; default notice Whitaker appeals the trial court's decision granting summary judgment in favor of PNC Bank in a foreclosure action and against his counterclaims. He argues the court erred by not striking a default letter that was allegedly not properly authenticated and by granting summary judgment despite genuine issues of material fact. The court found that his arguments regarding the letter's weight rather than its authenticity were outside the scope of his motion to strike. Whitaker's claims about PNC Bank failing to meet foreclosure conditions were rejected because the default letter was properly considered. His counterclaims for breach of contract, good faith, and RESPA violations were also dismissed, as he failed to prove a material breach, did not execute a loan modification, and provided no evidence of a RESPA violation. The court affirmed summary judgment in favor of PNC Bank.	Hess, J.	3/28/2025
Civil	ROBIN W. THOMPSON, ET AL. VS. THE CRANBERRY BAY HOMEOWNERS ASSOCIATION, ET AL.	Case No. 2024 CA 00040	Appeal from the Licking County Court of Common Pleas, Case No. 2022 CV 00571	Affirmed	Summary judgment; conversion; idemnification LM working on	Hoffman, J.	3/28/2025
Civil	MELISSA ACKISON VS. JOSEPH GERGLEY	Case No. 2024 CA 00036	Appeal from the Court of Common Pleas of Licking County, Case No. 2019 CV 1082	Affirmed	Limited-purpose public figure and private citizen; jury verdict not against the manifest weight of the evidence; attorney's fees	Gromley, J.	3/28/2025
Civil	CHRISTOPHER J. HENNEFORTH VS. ANDREA L. SEIDT, COMMISSIONER, OHIO DEPARTMENT OF COMMERCE, DIVISION OF SECURITIES	Case No. 24 CAE 06 0040	Appeal from the Delaware County Court of Common Pleas, Case No. 2023 CVF 12 0974	Affirmed	Administrative appeal; investment adviser license Christopher J. Henneforth appealed the Delaware County Court of Common Pleas' decision affirming the Ohio Department of Commerce, Division of Securities' revocation of his investment advisor representative license. Henneforth, the president of Level Partners Management, was found to have solicited investments for Hadsell Chemical Processing (HCP) under false pretenses, using investor funds for personal expenses and interest payments to other investors. After HCP filed for bankruptcy and its CEO pled guilty to fraud, the Division issued a notice detailing Henneforth's violations of state securities laws. The court rejected Henneforth's claims, including his assertion that he was entitled to Brady materials, concluding that his actions justified the license revocation. The Court of Appeals affirmed the decision.	Popham, J.	3/28/2025
Civil	MICHAEL S. LOWER VS. DONALD L. LOWER, ET AL.	Case No. 2024 CA 00040	Appeal from the Fairfield County Court of Common Pleas, Case No. 22-CV-00474	Affirmed	Award of attorney fees; denial of 60(B) motion Lower appeals the trial court's decision awarding attorney fees to Colin R. Beach, Esq., and denying his Rule 60(B) motion for relief from judgment. Lower initially filed a complaint seeking to invalidate a mortgage related to his late mother's estate, which was dismissed for failure to state a claim. After amending his complaint to allege fraud, tortious interference, and civil conspiracy, the court dismissed those claims and imposed sanctions, awarding Beach \$1,400 in attorney fees. Lower's subsequent appeals and motions for reconsideration were denied. The Court of Appeals upheld the trial court's decision, concluding that Lower failed to demonstrate a meritorious defense or establish grounds for relief under Rule 60(B). The judgment was affirmed.	Baldwin, P.J.	3/28/2025
Juvenile	IN THE MATTER OF K.C.	Case No. 24 CAF 10 0062	Appeal from the Delaware County Court of Common Pleas, Juvenile Division, Case No. 23-01-0134 AB	Affirmed	Appellate standard of review in permanent custody cases Appellant-Mother appealed the trial court's decision terminating her parental rights, arguing that the court had erred in finding sufficient evidence of unfitness and that termination was in the child's best interest. She contended that the trial court had improperly weighed evidence regarding her past conduct, stability, and potential harm to the child. The appellate court found that the trial court's determination had been supported by clear and convincing evidence, emphasizing the child's need for permanency and a safe environment. The court affirmed the termination of the Appellant-Mother's parental rights.	Montgomery, J.	3/28/2025
Juvenile	IN RE: K.Y.	Case No. 2024 CA 00176	Appeal from the Stark County Court of Common Pleas, Family Court Division, Case No. 2023JCV01401	Affirmed	Permanent custody; Indian Child Welfare Act Appellant-Mother challenged the trial court's decision granting permanent custody of her child, K.Y., to SCDJFS, arguing that the court failed to determine the child's best interests. Although the mother completed many aspects of her case plan, the caseworker testified that she did not make sufficient progress to reduce harm to K.Y. She struggled to read K.Y.'s cues, refused to address her mental health, and declined one-on-one assistance. Additionally, Mother argued that the trial court erred by failing to comply with the Indian Child Welfare Act of 1978. However, because she did not raise this issue at trial, she forfeited all but plain error review on appeal.	King, J.	3/28/2025

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