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Ohio Fifth District Court of Appeals Case Summaries

Case Caption	Case No(s)	Character of Proceeding	Judgment	Topics and Issues	Author	Date of Judgment Entry
Smith v. Avery	2025 CA 0106	Appeal from the Court of Common Pleas of Richland County , Probate Division, Case No. 20203010A	Affirmed	In plaintiffs' declaratory-judgment action in the probate court, the trial judge properly exercised jurisdiction under R.C. 2721.05 to decide who were the rightful owners of a trust's assets after the death of the last beneficiary designated in the trust. Relying on the trust's own language, the trial judge properly divided the trust's assets among the surviving heirs of the person who had created the trust. The Fifth District Court of Appeals affirmed the Richland County Probate Court's decision regarding the distribution of the Robert H. Fox Revocable Living Trust after Robert Fox, his wife Phyllis, and their two sons, Gregory and Jeffrey, all died without descendants. The dispute arose when court-appointed successor trustee Darin Avery suggested he might be entitled to the trust assets, prompting distant relatives of Robert and Phyllis to seek a declaratory judgment interpreting the trust. The probate court concluded that the trust's residual clause required the remaining assets to pass through Robert Fox's bloodline under Ohio intestacy law, awarding the trust property to Robert's surviving heirs rather than to Phyllis's relatives or Avery. On appeal, Avery challenged the probate court's jurisdiction, the plaintiffs' standing, the timeliness of the lawsuit, the lack of an evidentiary hearing, and the court's interpretation of the trust. The appellate court rejected all of Avery's arguments, holding that the probate court properly exercised its authority to determine the rightful beneficiaries, that the plaintiffs had standing to seek clarification of the trust, and that no statute of limitations or claim-preclusion bar applied because the controversy did not arise until the beneficiaries died without issue. The court further held that no evidentiary hearing was necessary because no witness had personal knowledge of Robert's intent beyond the trust documents themselves. Interpreting the trust as a whole, the appellate court found that the trust clearly intended any remaining assets to revert through Robert Fox's family line under intestate succession law, not to the trustee, and therefore affirmed the probate court's distribution of the trust assets to Robert's heirs.	Gormley	5/26/2026
State v. Simerly	CT2025-0123	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2025-0442	Affirmed in part; Reversed in part; Remanded	Allied Offenses - Restitution Jessica Simerly challenged both her sentence and the restitution order after pleading guilty to multiple offenses arising from a series of thefts and break-ins targeting an elderly victim's property in June 2025. The crimes involved stolen tools, equipment, and vehicles, including incidents captured on trail cameras showing Simerly and her codefendants removing property from the victim's land. Simerly received an aggregate prison sentence of forty-eight months and was ordered to pay \$23,800 in restitution jointly and severally with her codefendants. On appeal, she argued her convictions should have merged as allied offenses and that the restitution amount lacked sufficient evidentiary support. The State conceded the merger issue, and the appellate court agreed, reversing the sentence in part and remanding the case for resentencing. However, the court upheld the restitution order, finding the victim's testimony regarding the value of the stolen property credible and sufficiently detailed to support the \$23,800 award.	Hoffman	5/27/2026
State v. Maxwell	2025CA00124	Appeal from the Stark County Court of Common Pleas, Case No. 2025-CR-0379	Affirmed	Manifest Weight/Sufficiency of Evidence - Strangulation and Sexual Battery Mens Rea for R.C. 2907.03(A)(1) Different from Mens Rea for R.C. 2907.03(A)(3) Robert Maxwell challenged his convictions for sexual battery, strangulation, and domestic violence following a bench trial involving allegations by his wife stemming from events on February 19–20, 2025. The victim testified that after an evening of drinking and arguing, Maxwell forced oral sex on her while she was falling asleep under the effects of a prescription sleeping pill, later forcibly penetrated her anally, and then grabbed her by the neck and shoved her against a wall. Deputies responding to the 9-1-1 call observed the victim upset and injured, and a sexual assault nurse examiner documented neck redness, pain, hoarseness, and injuries consistent with strangulation and assault. Maxwell denied the allegations and claimed the victim initiated the sexual encounter. The trial court found him guilty of one count of sexual battery involving oral sex with an unaware victim, strangulation, and domestic violence, but acquitted him of a second sexual battery charge involving anal sex due to lack of corroborating evidence. On appeal, Maxwell argued the convictions were unsupported by sufficient evidence and against the manifest weight of the evidence. The appellate court rejected those arguments, finding the victim's testimony, corroborating medical evidence, photographs, and witness observations sufficient to support the convictions and concluding the trial court reasonably found the victim more credible than Maxwell. The court affirmed the convictions and sentence, including a 36-month prison term and Tier III sex offender classification.	Hoffman	5/27/2026



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State v. Engler	2025CA00187	Appeal from the Massillon Municipal Court of Stark County , Case No. 2025CRB01493	Reversed and Remanded	Plea Colloquy - Failure to Inform of Effect of Guilty Plea Anthony Ventura Engler challenged his conviction for criminal mischief after pleading guilty to the amended misdemeanor charge stemming from allegations that he followed and recorded two women at several locations in Massillon in June 2025. Originally charged with menacing by stalking, Engler accepted a plea agreement reducing the offense to criminal mischief and received a sentence of sixty days in jail with all but four days suspended, a \$100 fine, and conditions requiring no related offenses for five years and compliance with treatment orders in a related Stark County case. On appeal, Engler argued the trial court failed to comply with Criminal Rule 11(E) because it did not properly explain the effect of his guilty plea before accepting it. The appellate court agreed, finding that although the trial court reviewed a waiver-of-rights form with Engler, neither the court nor the plea form informed him that a guilty plea constitutes a complete admission of guilt, as required by law. Relying on prior Ohio precedent, the court held this omission was a complete failure to comply with Crim. R. 11(E), meaning Engler did not need to show prejudice. The court therefore vacated his guilty plea and remanded the case for further proceedings.	Hoffman	5/27/2026
In re A.B.	CT2025-137	Appeal from the Muskingum County Court of Common Pleas, Juvenile Division, Case No. 22430173	Affirmed	Legal Custody - UCCJEA - Reasonable Efforts to Reunify - Best Interest of Child Appellant D.D. "Mother" challenged the trial court's decision granting legal custody of her child, A.B., to the child's paternal grandparents after dependency proceedings began following allegations of abuse while the child was living with Father in Ohio. The Agency filed a complaint in October 2024 after the child was found with bruises and other injuries and later disclosed that Father and his paramour had used corporal punishment. Mother, whose whereabouts were initially unknown, had left the child with Father months earlier and had limited contact thereafter. The child was eventually placed with the grandparents in Delaware, where he thrived, received counseling and ADHD treatment, and lived with a half-sibling. Father and his paramour later pleaded guilty to child endangering and were sentenced to prison. Mother appealed, arguing the Ohio court lacked jurisdiction under the UCCJEA, the Agency failed to make reasonable reunification efforts, and granting custody to the grandparents was not in the child's best interest. The appellate court rejected all three arguments, finding Ohio properly exercised emergency jurisdiction because the child was present in Ohio and faced abuse concerns, the Agency made reasonable efforts by facilitating visitation and conducting home studies despite Mother's inconsistent participation, and the evidence supported the conclusion that placement with the grandparents provided the child stability, safety, continuity of care, and strong family bonds. The appellate court therefore affirmed the award of legal custody to the grandparents.	Hoffman	5/27/2026
State v. Burrell	25CA00024	Appeal from the Guernsey County Court of Common Pleas, Case No. 12-CR-127	Affirmed	Judicial release Tyler Burrell challenged the revocation of his judicial release and the denial of additional jail-time credit after he was convicted in federal court of conspiracy to distribute and possess with intent to distribute controlled substances while on judicial release from a fifteen-year Ohio prison sentence for complicity to commit involuntary manslaughter and aggravated robbery. Burrell had been granted judicial release in 2020, but after pleading guilty in federal court and receiving a five-year federal prison sentence, the State moved to revoke his release. At the revocation hearing, Burrell argued his role in the federal conspiracy was limited, emphasized his progress while on release, and sought credit for time spent in federal custody, claiming an Ohio hold prevented his transfer to community placement. The trial court revoked his judicial release, reinstated the remainder of his original fifteen-year sentence, and awarded only 132 days of jail-time credit. On appeal, the court held the trial court did not abuse its discretion because Burrell committed a serious new felony offense while on release for crimes involving two deaths, and the federal conviction alone constituted a substantial violation of the conditions of judicial release. The appellate court also rejected Burrell's request for additional jail-time credit, explaining that Ohio law does not permit credit toward a state sentence for time served on a separate federal conviction arising from unrelated criminal conduct. The judgment revoking judicial release and reinstating the balance of his sentence was therefore affirmed.	Baldwin	5/27/2026



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In re A.M.	2025 AP 12 0043	Appeal from the Tuscarawas County Court of Common Pleas, Juvenile Division, Case No. 24JN00409	Affirmed	Permanent Custody T.W. "Mother" appealed the Tuscarawas County Juvenile Court's November 5, 2025 decision terminating her parental rights and granting permanent custody of her daughter, A.M., to Tuscarawas County Job and Family Services ("TCJFS"), but the appellate court affirmed the judgment. TCJFS first became involved with the family in 2023 after A.M. was found living in unsafe conditions involving homelessness, lack of utilities, and substance abuse. Mother refused to comply with case plan services, including drug screening, removed herself from the case plan, and failed to maintain contact with the agency or visit A.M. During the second case filed in December 2024, Mother was intermittently incarcerated, could not be located for service except while jailed, and ultimately was served notice of the permanent custody hearing by publication after the agency exercised reasonable diligence to find her. Evidence at the permanent custody hearing showed that A.M. had been in agency custody for more than twelve months of a consecutive twenty-two-month period, neither parent could provide stable housing or proper care, and Mother admitted she could not care for the child. Testimony also established that A.M., who suffered from significant emotional and behavioral disorders, was thriving in a foster-to-adopt placement, wanted to be adopted, and needed a legally secure placement that could not be achieved without permanent custody. The appellate court rejected Mother's claims that she lacked proper notice, that TCJFS failed to make reasonable reunification efforts, and that the best-interest finding was against the manifest weight of the evidence, concluding that clear and convincing evidence supported the trial court's decision.	Popham	5/28/2026
State v. Lusby	25-CAA-11-0097	Appeal from the Delaware County Court of Common Pleas, Case No.24 CRI 12-0706	Affirmed	Prison sentence after revocation of community control Appellant Branden Lusby appealed the Delaware County Common Pleas Court's October 7, 2025 judgment revoking his community control and imposing consecutive prison terms totaling 45 months, but the appellate court affirmed the sentence. Lusby originally pleaded guilty to failure to comply with the order or signal of a police officer and assault in exchange for dismissal of other charges, and he was sentenced to three years of community control with conditions that included completing the West Central Community Based Correctional Facility ("CBCF") program and avoiding new criminal offenses. Shortly after sentencing, the State moved to revoke community control after Lusby was unsuccessfully terminated from the CBCF program and was arrested and convicted in Marysville Municipal Court for obstructing official business and resisting arrest. At the violation hearing, Lusby admitted the violations. The trial court reviewed the presentence investigation report, a psychological evaluation, and a violation report before revoking community control and imposing reserved prison terms of 30 months for failure to comply and 15 months for assault, to be served consecutively. On appeal, Lusby argued the trial court failed to properly weigh the seriousness and recidivism factors under Ohio sentencing law, but the appellate court held that the trial court appropriately considered the statutory sentencing factors, Lusby's lengthy criminal history, prior unsuccessful attempts at rehabilitation, and repeated violations of supervision. The court further explained that appellate courts may not reweigh sentencing factors where the sentence falls within the statutory range and is supported by the record, concluding that the sentence was lawful and not an abuse of discretion.	Popham	5/28/2026