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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 |
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| <a href="#">Wright-Patt Credit Union, Inc. v. Sup Soggy Doggy</a> | CT2026-0022  | Appeal from the <b>Muskingum County</b> Court of Common Pleas, Case No. CE2025-0129                           | Reversed and Remanded | <p>Foreclosure, Civ.R. 56(F) Motion</p> <p>Defendants-Appellants Sup Soggy Doggy, LLC and Steven R. Simmons appealed the Muskingum County Court of Common Pleas' grant of summary judgment and foreclosure in favor of Wright-Patt Credit Union (WPCU) arising from a \$500,000 loan that went into default after October 2024, with Simmons personally guaranteeing the debt and WPCU holding a mortgage on the property. The appellants argued that the trial court improperly ruled on WPCU's summary-judgment motion before they had an opportunity to file a reply to WPCU's response to their Civ.R. 56(F) motion seeking additional time for discovery. The Fifth District Court of Appeals agreed, explaining that Civ.R. 6(C)(1) permits a movant seven days to file a reply after a response and that due process requires parties to have an opportunity to be heard before the court rules. Because the trial court entered judgment before that seven-day period expired, the appellate court found reversible error, sustained the first two assignments of error, and remanded the case to allow the appellants to file their reply. The court found the third assignment of error premature and therefore did not address its merits.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Hoffman | 10/5/2026              |
| <a href="#">State v. Heston</a>                                   | 26 CA 000005 | Appeal from the Court of Common Pleas of <b>Knox County</b> , Case No. 25CR09-0196                            | Affirmed              | <p>The trial judge during a guilty-plea hearing in a felony case should have, under Criminal Rule 11(C)(2)(b), advised the defendant that (1) a plea of guilty is a complete admission of guilt and (2) the trial judge, upon acceptance of the plea, had the authority to immediately impose a sentence in the case. Despite those errors, the defendant would need to show prejudice in order for the plea to be undone on appeal, and no prejudice was shown where (1) the defendant acknowledged his guilt and did not claim innocence and (2) the trial judge opted not to impose a sentence on the same day as the plea change.</p> <p>Michael Heston appealed his Knox County conviction, arguing that his guilty pleas to two rape charges were not knowingly, intelligently, and voluntarily entered because the trial court failed to advise him that a guilty plea constitutes a complete admission of guilt and that the court could proceed immediately to sentencing after accepting the pleas. The appellate court agreed that the trial court failed to comply with Crim.R. 11(C)(2)(b), which requires these advisements, but held that Heston was still required to demonstrate prejudice because the omissions did not constitute a complete failure to explain his nonconstitutional rights. The court found no prejudice because Heston expressly admitted that he committed the offenses, signed a plea agreement acknowledging his guilt and the possibility of immediate sentencing, and repeatedly accepted responsibility, including at sentencing when he apologized to the victims. Because the record did not show that Heston would have refused to plead guilty had the trial court provided the missing advisements, the court affirmed the judgment.</p>                  | Gormley | 10/5/2026              |
| <a href="#">Blain v. Blain</a>                                    | 26-COA-001   | Appeal from the <b>Ashland County</b> Court of Common Pleas, Domestic Relations Division, Case No. 23-DIV-054 | Affirmed              | <p>Classification and division of marital and separate property</p> <p>Edward Blain appealed the Ashland County Court of Common Pleas' divorce decree, challenging the trial court's classification of the Crumrine property as marital, its finding that he committed financial misconduct, its refusal to find that Bonnie Blain committed financial misconduct, and its handling of a magistrate's ex parte order concerning the property-sale proceeds. The Fifth District Court of Appeals affirmed the judgment on all four assignments of error. The court held that competent, credible evidence supported the finding that the Crumrine property was marital because Blain failed to prove by clear and convincing evidence that Terry Crumrine's transfer of the property was a gift; the deed, mortgage, and surrounding circumstances supported the trial court's conclusion that the transfer was made for consideration. The court also upheld the finding of financial misconduct because Blain received \$241,584.38 from the property sale, denied under oath that he had received the funds, and failed to disclose or deposit the proceeds despite court orders. Conversely, the court found no error in determining that Bonnie did not commit financial misconduct because the evidence showed that proceeds from her retirement account were used for taxes, repayment of a family loan, and support of the parties' son, without proof that she profited or intentionally deprived Blain of his share. Finally, the court overruled Blain's challenge to the magistrate's ex parte order because he failed to provide supporting legal authority or a developed argument as required by App.R. 16(A)(7), and the appellate court affirmed the divorce judgment in its entirety.</p> | Baldwin | 10/5/2026              |



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| <a href="#">House of G.R.A.C.E. Residential Servs., L.L.C. v. C-8 Found., L.L.C.</a> | 2026-CA-00015<br>2026-CA-00016 | Appeal from the <b>Stark County</b> Court of Common Pleas,<br>Case No. 2024-CV02375       | Affirmed | Civil Rule 41 (B)(1) Dismissal<br><br>House of G.R.A.C.E. Residential Services, LLC appealed the Stark County Court of Common Pleas' dismissal of its lawsuit with prejudice for failure to prosecute under Civ.R. 41(B)(1). House of G.R.A.C.E. had sued C8 Foundation and Canton City School District employees for defamation and tortious interference, alleging false abuse reports caused it to lose a service contract. The Fifth District Court of Appeals affirmed the dismissal, finding that House of G.R.A.C.E. received sufficient notice that dismissal with prejudice was possible through the defendants' motion to dismiss and had 32 days to respond but failed to do so. The court also found that House of G.R.A.C.E.'s repeated inability to schedule depositions, despite multiple proposed dates and an existing discovery deadline, demonstrated negligent, irresponsible, or dilatory conduct that prejudiced the defendants and justified the harsh sanction of dismissal. The court rejected the argument that delays were caused by a governmental agency, noting that House of G.R.A.C.E. waited months to subpoena and follow up on the agency's records. It further held that the trial court did not improperly convert the dismissal motion into a summary-judgment proceeding because no Civ.R. 56 motion was involved. Finally, the appellate court declined to consider House of G.R.A.C.E.'s "verified response" filed after dismissal because the trial court lacked jurisdiction to consider filings made after the case had been unconditionally dismissed. Accordingly, all five assignments of error were overruled and the judgment was affirmed.                                                                                                                                                | Popham  | 10/6/2026              |
| <a href="#">State v. Marlatt</a>                                                     | CT2026-0037                    | Appeal from the <b>Muskingum County</b> Court of Common Pleas,<br>Case No. CR-2025-0570   | Affirmed | Sentencing<br><br>Lynn C. Marlatt appealed her convictions and sentence following a negotiated guilty plea to theft in office, telecommunications fraud, and tampering with records. Under the plea agreement, the theft and telecommunications-fraud counts merged for sentencing, and Marlatt agreed to pay \$475,521.75 in restitution to the Village of New Concord and \$16,359 to the Ohio Auditor of State. She argued that her guilty pleas were not knowing, intelligent, or voluntary because counsel allegedly failed to review discovery and that her sentence was contrary to Ohio's felony-sentencing statutes. The Fifth District rejected both arguments, finding that the trial court fully complied with Crim.R. 11, Marlatt acknowledged her rights and guilt, and she failed to show that counsel's alleged failure to review discovery affected her decision to plead guilty or caused prejudice. The court also found that counsel vigorously advocated for leniency at sentencing and presented substantial mitigating evidence. Regarding the sentence, the court held that the trial court properly considered the purposes and principles of felony sentencing, the seriousness and recidivism factors, mitigating circumstances, the substantial financial loss to the Village, the impact on public trust, victim statements, and restitution. The trial court therefore acted within its discretion in imposing a seven-year minimum to ten-and-one-half-year maximum prison term on the theft-in-office count and a concurrent 36-month term for tampering with records, along with restitution and seizure of Marlatt's OPERS pension payments. Because the sentence was within the statutory range and supported by the record, the appellate court affirmed the judgment.                                  | Popham  | 10/6/2026              |
| <a href="#">Grimes v. Piqua</a>                                                      | 26 CAE 04 0029                 | Appeal from the <b>Delaware County</b> Court of Common Pleas,<br>Case No. 25 CV G 09 1025 | Affirmed | Political Subdivision Immunity; Civ. R. 12©<br><br>The City of Piqua appealed the Delaware County Common Pleas Court's denial of its Civ.R. 12(C) motion for judgment on the pleadings concerning negligence and strict-liability claims brought by residents who alleged injuries from toxic emissions released during lithium-ion battery burning and fire-training activities at a former Piqua water treatment plant. Piqua argued that it was immune from liability under R.C. Chapter 2744 because its activities constituted governmental functions. The trial court had dismissed the plaintiffs' intentional-tort, nuisance, recklessness, and gross-negligence claims but found that the negligence and strict-liability claims required further factual development before immunity could be determined. On appeal, the Fifth District Court of Appeals explained that political-subdivision immunity depends on a three-tiered analysis and that, at the pleading stage, the court must accept the plaintiffs' factual allegations as true and draw reasonable inferences in their favor. The court noted that the allegations— including that Piqua leased the property to private entities for large-scale battery burning, allegedly failed to adequately monitor emissions, and permitted activities that exceeded regulatory approvals—could potentially establish that the City was performing a proprietary rather than governmental function or that an exception to immunity applied. Because the complaint did not conclusively establish Piqua's entitlement to immunity, the court held that dismissing the negligence and strict-liability claims was premature. The court therefore overruled Piqua's assignment of error and affirmed the trial court's judgment, allowing those claims to proceed to discovery. | Hoffman | 10/6/2026              |



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| <a href="#">State v. McIntire</a>        | 26-COA-002<br>26-COA-003 | Appeal from the <b>Ashland County</b> Court of Common Pleas,<br>Case Nos.<br>25-CRI-136<br>25-CRI-164 | Affirmed            | Court costs<br><br>Angie McIntire appealed the Ashland County Court of Common Pleas' imposition of court costs following her guilty pleas to several drug-related offenses, arguing that the costs were improper because she was indigent, the court had waived mandatory fines due to her inability to pay, and she was sentenced to prison. McIntire did not object to the court costs at sentencing, so the appellate court reviewed the issue for plain error. Relying on its recent decision in State v. Rouse, the court explained that R.C. 2947.23 requires courts to impose prosecution costs on convicted defendants regardless of indigency, although a court has discretion under R.C. 2947.23(C) to waive, suspend, or modify those costs and is not required to consider a defendant's ability to pay. The court found no obvious error in the trial court's decision to impose costs, noting that McIntire's indigency, waiver of mandatory fines, and prison sentence did not prevent the court from assessing costs. Accordingly, the court overruled McIntire's sole assignment of error and affirmed the trial court's judgment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Baldwin    | 10/6/2026              |
| <a href="#">State v. Kelley</a>          | 2026CA00095              | Appeal from the <b>Stark County</b> Court of Common Pleas,<br>Case No. 2008CR0643A                    | Affirmed            | Petition for Post-Conviction Relief; Untimely Filed; Claims Barred by Res Judicata<br><br>William Kelley appealed the Stark County Court of Common Pleas' denial of his successive petition for post-conviction relief arising from his 2008 convictions for murder as a proximate result of child endangering and child endangering, for which he received an aggregate sentence of 15 years to life. Kelley filed his successive petition on April 2, 2026, nearly 16 years after the April 14, 2010 deadline for filing a timely petition. He argued that he was unavoidably prevented from discovering facts supporting his claims and that constitutional errors involving the jury instructions and verdict forms improperly broadened the felony-murder charge. The Fifth District Court of Appeals held that the trial court correctly determined it lacked jurisdiction because Kelley's petition was both untimely and successive, and he failed to satisfy either of the statutory exceptions under R.C. 2953.23(A)(1), including the requirement to show that, but for constitutional error, no reasonable factfinder would have convicted him. The court further held that Kelley's claims were barred by res judicata because they could have been raised at trial or on direct appeal. Accordingly, the court overruled all three assignments of error and affirmed the trial court's judgment.                                                                                                                                                                                                                                                                                                                                                                                                                                                | Hoffman    | 10/7/2026              |
| <a href="#">Yorkland, Ltd. v. Kildow</a> | 26 CAE 04 0035           | Appeal from the <b>Delaware County</b> Court of Common Pleas,<br>Case No. 24 CVH 03 0297              | Affirmed            | Summary judgment; Res judicata; Discovery; Civ.R. 37 sanctions<br><br>Tim Kildow and Warehouse Italian Diners, LLC appealed the Delaware County Common Pleas Court's summary judgment dismissing their counterclaims and third-party claims against Kevin Hensel and awarding Yorkland, Ltd. \$38,232.63 for breach of an oral lease. The dispute arose from property purchased by Hensel in 2017, which Kildow and his restaurant continued to occupy under an oral month-to-month lease, while the parties discussed but never finalized an agreement for Kildow to purchase the property. After an earlier forcible-entry-and-detainer action established that the parties had an oral lease and no enforceable purchase contract, the trial court ruled that Kildow's claims for breach of contract, quiet title, and specific performance were barred by res judicata and issue preclusion, and separately rejected his fraud and unjust-enrichment claims. The Fifth District Court of Appeals affirmed, holding that the existence of the oral lease and absence of a purchase agreement had already been conclusively decided, that no enforceable option to purchase or application of rent toward equity existed, and that Kildow's arguments concerning taxes, insurance, maintenance, and proceeds from other property sales could not circumvent the prior judgment. The court also found no abuse of discretion in the trial court's refusal to permit additional depositions or compel discovery because the requested information concerned issues already resolved and the discovery period had expired. Finally, the court upheld \$6,982.50 in Civ.R. 37 discovery sanctions because Kildow's motion to compel was not substantially justified. All four assignments of error were overruled, and the trial court's judgment was affirmed. | Montgomery | 10/7/2026              |
| <a href="#">Mills v. Jones</a>           | 2026CA00090              | Appeal from the Canton Municipal Court, <b>Stark County</b> , Ohio,<br>Case No. 2003 CVG 3979         | Reversed & Remanded | Eviction; Motion to seal record; Motion to redact personal identifiers<br><br>Anthony Dominic Kennedy, Sr. appealed the Canton Municipal Court's denial of his motion to restrict public access to or redact personal information from a 2003 eviction record, arguing that the record lacked competent evidence establishing him as a tenant or otherwise connecting him to the tenancy. Kennedy maintained that the decades-old eviction record continued to harm his ability to obtain stable housing, despite the case having been dismissed in January 2004. The Fifth District Court of Appeals acknowledged that Kennedy's appellate brief failed to comply with several requirements of Ohio Appellate Rule 16 but considered his argument on the merits in the interest of justice. The court explained that under Sup.R. 45(E), courts must weigh the presumption of public access against competing interests, including privacy and public policy, and use the least restrictive means necessary when restricting access to court records. Because the trial court denied Kennedy's motion without explaining its reasoning or conducting the required balancing analysis, the appellate court concluded that the record was insufficient for meaningful review. It therefore sustained Kennedy's assignment of error, reversed the trial court's judgment, and remanded the case for further proceedings and clarification, without directing the trial court to grant the motion. One judge dissented, reasoning that the trial court's decision should be presumed lawful absent evidence to the contrary.                                                                                                                                                                                                                                     | Montgomery | 10/8/2026              |



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| <a href="#"><u>In re T.K.</u></a> | 2026 CA 00031 | Appeal from the Court of Common Pleas of <b>Stark County</b> , Juvenile Division, Case No. 2024 JCV 01439 | Affirmed | <p>The trial court properly awarded permanent custody of father's child to a county children's services agency.</p> <p>Joshua B. appealed the Stark County Court of Common Pleas' decision granting permanent custody of his seven-year-old son, T.K., to Stark County Job and Family Services. The Agency initially intervened in December 2024 due to concerns about the child's hygiene and possible domestic violence in the home. Father challenged the proceedings, arguing that his waiver of the right to counsel was not voluntary and that the trial court improperly excluded evidence and limited cross-examination. The Fifth District Court of Appeals rejected these arguments, finding that Father knowingly chose to represent himself, failed to preserve his evidentiary claims for appeal, and provided no evidence contradicting the finding that he had gone more than 90 days without visiting or contacting his son during two separate periods. The court also determined that clear and convincing evidence supported findings that Father had failed to remedy the conditions leading to the child's removal, including his failure to participate in recommended domestic-violence treatment and individual counseling, and that he had abandoned the child. Considering the child's behavioral and developmental needs, the negative effects associated with visits, and the prospect of adoption by Father's sister, the court concluded that permanent custody with the Agency was in the child's best interest. Accordingly, the appellate court affirmed the trial court's judgment granting permanent custody to the Agency.</p> | Gormley | 10/8/2026              |