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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. ALEX HAWKS	Case No. 24 CAC 02 0014	Appeal from the Delaware Municipal Court, Case No. 23CRB01264	Affirmed	Telecommunication harassment; duplicity in complaint; jury instructions The Appellant argued that the first count of the complaint was duplicitous, but the court ruled he waived this issue due to failing to raise it timely. He also appealed his conviction, claiming insufficient evidence and that the verdict was against the manifest weight of the evidence, asserting he acted in good faith, believing he had the right to contact the victim by phone based on the shared parenting agreement. At trial, the Appellant admitted the victim had asked him to use the app, but he continued to contact her by phone. The court found the jury correctly determined he acted knowingly, and the conviction was not against the manifest weight of the evidence. Appellant argued the trial court erred by not giving an instruction on mistake of fact. Since he failed to submit specific language for the instruction, the court found the claim waived. The Appellant also challenged the admission of prior acts evidence, but the court ruled it was relevant to the offense, affirming the judgment of the Delaware Municipal Court.	Hoffman, P.J.	1/3/2025
Criminal	STATE VS. DAVID R. MORRIS	Case No. 24 CAA 080048	Appeal from the Court of Common Pleas, Case No. 18 CRI 108 0460	Affirmed	Res judicata The Appellant argued that the court abused its discretion by failing to hold a hearing on Appellant's motion to withdraw his plea and by denying the motion the same day it was filed. Upon review of the record, the Court of Appeals noted that his motion was a repeat of his previous grounds to withdraw. His next arguments could have been raised in a direct appeal or were already addressed in State v. Morris, 2020-Ohio-5361 (5th Dist.) and were barred from consideration in the current case.	King, J.	1/3/2025
Criminal	STATE VS. JUSTIN BIRCHELL	Case No. 24-COA-021	Appeal from the Ashland County Court of Common Pleas, Case No. 22-CRI-212	Judgment Affirmed in part, Reversed in part, and Remanded for resentencing	Violation of a protection order; allied offenses The Appellant argued that because the conviction for violation of a protection order is supported by the same conduct as the convictions for aggravated burglary and assault, the conviction of violation of a protection order is an allied offense of similar import which should have merged with the other convictions. The Court of Appeals found that the offense of violation of the protection order was committed by the same conduct as the crimes of aggravated burglary and assault and was therefore an allied offense of similar import.	Hoffman, P.J.	1/6/2025
Criminal	STATE VS. ADAM GAITERS	Case No. CT2024-0118	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2024-0230	Reversed and Remanded	Marsy's law The State argued that the trial court lacked the authority to terminate Appellee's community-control sanctions without notifying the victim. The Court of Appeals ruled that, under R.C. 2930.161(A) and 2930.161(B), victims are entitled to notice and an opportunity to be heard whenever a court considers early termination of a defendant's community-control sanctions. The Court further held that a trial court abuses its discretion if it terminates a defendant's community-control sanctions without providing the parties notice and an opportunity to be heard. It was determined that the victim had not been given notice or an opportunity to be heard regarding the Chief Probation Officer's report, which requested the early termination of Appellee's community-control sanctions. As a result, the trial court abused its discretion by terminating Appellee's community-control sanctions without fulfilling the required notice and hearing process.	Hoffman, P.J.	1/6/2025
Criminal	STATE VS. AMADO HERRERA-REYES aka AMADO HERRERA REYES	Case No. 24-COA-010	Appeal from the Ashland County Court of Common Pleas, Case No. 23-CRI-043	Affirmed	Merger Amado Hererra-Reyes appeals his sentence following convictions for Gross Sexual Imposition, Pandering Obscenity Involving a Minor, Illegal Use of a Minor in Nudity-Oriented Material, Endangering Children, and Tampering with Evidence, in violation of various sections of the Ohio Revised Code. The trial court sentenced the appellant to a total of 18 months for Gross Sexual Imposition, 8 to 12 years for Pandering Obscenity Involving a Minor, 6 to 9 years for Illegal Use of a Minor in Nudity-Oriented Material, 6 to 9 years for Endangering Children, and 30 months for Tampering with Evidence. The sentences for Gross Sexual Imposition, Pandering, Illegal Use, and Endangering Children are consecutive, while the sentence for Tampering with Evidence is concurrent with the others. The appellant argues the trial court erred by failing to merge Counts Three, Nine, and Thirteen for sentencing, but this issue was not raised at the trial level, forfeiting all but plain error. The court found no merger was required, and thus the appellant cannot demonstrate prejudice. The appellant also claims ineffective assistance of counsel for failing to seek merger of these counts, but this argument fails as the counts do not merge. The appellant contests the imposition of consecutive sentences, arguing they are unsupported by the record. However, the trial court made the necessary findings and noted the appellant's repeated abuse of a young family member, including photographing the abuse. The court emphasized the lasting harm to the victim and found no error in imposing consecutive sentences.	Baldwin, J.	1/8/2025

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Criminal	STATE VS. KIMBERLY KETTERING	Case No. 24COA027	Appeal from the Ashland County Municipal Court, Case No. 16-CRB01132	Affirmed	Monetary interest on restitution order Appellant was charged with theft under R.C. 2913.02, a first-degree misdemeanor, and ordered to pay restitution. Hyde later sought to revive the judgment and collect the remaining restitution balance with statutory interest. Appellant did not oppose the revivor but argued against interest, claiming it was not included in the original 2016 sentencing order and asserting the trial court exceeded its jurisdiction by adding interest. The trial court ruled that Hyde was entitled to interest under R.C. 1343.03 starting from the revivor order date, excluding the dormancy period. Appellant appealed, requesting the removal of interest from the May 13, 2024 order. The appellate court held that the trial court's decision adhered to the plain language of the statute, leaving broader policy concerns to the legislature.	Delaney, P.J.	1/9/2025
Juvenile	IN THE MATTER OF: K.H. AND K.H.	Case No. CT2024-0081	Appeal from the Muskingum County Court of Common Pleas, Juvenile Division, Case Nos. 22130321 & 22130322	Affirmed	Permanent custody Appellant argued that the trial court erred when it granted permanent custody of K.H. and K.H. to the Muskingum County Adult and Child Protective Services. Upon review, the Court of Appeals found that the trial court considered all of the relevant evidence before it determined the children could not be placed with either parent. The appellant-mother's chronic mental illness and or chemical dependency was so severe that she could not remedy the conditions that caused her children's removal.	Baldwin, J.	1/3/2025
Civil	DOVER CHEMICAL CORP. VS. CITY OF DOVER, OHIO	Case Nos. 2024 AP 02 0008 2024 AP 04 0016	Appeal from the Tuscarawas County Court of Common Pleas, Case No. 2021 CV 02 0097	Affirmed/ Reversed in Part and Remanded	Summary judgment on electric surcharge; summary judgment on unjust enrichment The appellate court addressed several issues involving the City and Dover Chemical. It upheld the trial court's summary judgment in favor of Dover Chemical, ruling that the Amended Emergency Ordinance violated the Equal Protection Clause and was unenforceable. The surcharge aimed at recouping costs since 1975 was deemed unreasonable, unjust, and discriminatory, as it disproportionately targeted Dover Chemical without evidence of cost or profit analysis and was imposed after excessive delay. On the City's claim of improperly compelled testimony on privileged communications, the appellate court found no error, as the testimony was limited to non-privileged subject matter, and the City failed to show harm. Regarding Dover Chemical's unjust enrichment claim, the appellate court reversed the trial court's summary judgment for the City, finding that the allegations were sufficiently stated in the pleadings. It remanded the claim for further proceedings under the proper summary judgment standard, allowing additional discovery or legal defenses as necessary.	King, J.	1/3/2025
Civil	GERALD B. GOLUB VS. WILLIAM SHARRARD, JR., ET AL.	Case No. 2024-CA-00022	Appeal from the Stark County Court of Common Pleas case 2023CV02100	Affirmed	(NPT originally filed 12/24/24) Attorney fees; breach of contract; tortious interference The trial court denied Attorney Golub's motion for default judgment and dismissed his claims for breach of contract, tortious interference, breach of settlement agreement, and theft under Civ.R. 12(B)(1) and Civ.R. 12(B)(6). It determined that Golub's claims for attorney fees must be pursued in probate court, as they arose from securing estate assets, and Golub had failed to exhaust his remedies by not filing for fees in probate court. On appeal, Golub argued the trial court erred by dismissing his complaint for lack of subject matter jurisdiction, denying his motion for default judgment, and granting the defendants' motions to dismiss for failure to state a claim. The appellate court upheld the trial court's rulings, finding that the probate court was the appropriate forum for determining attorney fees under quantum meruit and that Golub's theft claim failed due to a lack of ownership rights. The appellate court overruled Golub's sole assignment of error.	Delaney, P.J.	1/3/2025
Civil	SCOTT L. BURRE VS. DEREK P. UTT	Case No. 2024 CA 00019	Appeal from the Fairfield County Court of Common Pleas, Case No. 2023 CP 00043	Affirmed	Civil stalking protection order Derek Utt appealed the decision to grant Scott Burre a civil stalking protection order. Burre alleged that Utt engaged in obsessive behavior targeting him and his family, including Facebook posts, being on school property near Burre, making threatening statements about public officials, and advising on firearm purchases. Despite a temporary protection order, Utt's conduct escalated, including protests and distributing wristbands with inflammatory messages on school grounds. Utt argued the court's decision violated his right to free speech and lacked evidence of direct threats. However, the court found Utt's actions, including false accusations and proximity to Burre, created fear for Burre and his family's safety. The appellate court upheld the trial court's decision, concluding there was credible evidence of a pattern of behavior intended to cause harm or distress. Derek Utt argued that the CSPO was unenforceable because it failed to specify what constituted protected speech and was overly vague. The court disagreed, noting the CSPO did not regulate Utt's speech about Scott Burre or his family but instead restricted contact and proximity to them. The judgment clarified that Utt was not prohibited from speaking about Burre or his family to the general public. The court found no abuse of discretion in the CSPO's scope and rejected Utt's claim of vagueness, affirming that the order was clear in its restrictions and did not infringe on protected speech.	King, J.	1/6/2025

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Domestic Relations	STEPHANIE N. KONESKI VS. JERRY D. KONESKI	Case No. CT2024-0020	Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. DA2022-0222	Affirmed	Separate/marital real estate property; tracing of assets Jerry D. Koneski appealed the divorce decree from the Muskingum County Court of Common Pleas, contesting the division of property. He argued that the trial court erred in classifying the Claysville property as marital property and awarding his wife half the equity in the marital home. The court found that funds from the sale of the premarital Woodhaven property were commingled to purchase subsequent properties, supporting the classification of the Claysville property as marital. The court also upheld its valuation and equitable division of the Claysville property. Additionally, the husband contested the court's finding that the equity in a Lexus was the wife's separate property, but the court ruled that he had agreed she could retain the insurance proceeds. The appellate court affirmed the trial court's decisions, finding no errors or abuse of discretion.	King, J.	1/8/2025