

**THE COURT OF APPEALS OF OHIO**  
**SECOND APPELLATE DISTRICT**  
**CASE SUMMARIES**  
**August 20, 2021**

These case summaries are issued for the convenience of the public, the bench, and the bar. They are a brief statement of the court's holdings and are not to be considered headnotes or syllabi. Copies of opinions are available from the particular county's clerk of courts. The full text of each opinion will be available on the Ohio Supreme Court's website at <http://www.supremecourt.ohio.gov/rod/docs/?source=2>.

Case Name: *TruLogic, Inc. v. General Electric Company through its GEA Division*

Case No: Greene App. No. 2021-CA-3; T.C. Case No. 2020-CV-464

Panel: Tucker, Welbaum, Epley

Author: Jeffrey M. Welbaum

Summary: Appellant's breach of contract claim is not preempted by federal copyright law. A software licensing agreement may involve the required extra element (instead of or in addition to the acts of reproduction, performance, distribution, or display) that changes the action's nature so that it is qualitatively different from a copyright infringement claim. Under the allegations of the complaint, accepted as true, appellant's restriction of the use of its software and other restrictions in the software licensing agreement provided the required extra element for avoiding preemption. As a result, the trial court erred in dismissing the breach of contract claim. However, the trial court did not err in dismissing appellant's claim for unjust enrichment. Unjust enrichment involves a contract implied in law. Where an express agreement exists, there can be no implied agreement. Further, while parties are permitted to plead alternative claims, the allegations in the complaint and the attached software licensing agreement provided that the written agreement was the entire agreement of the parties and superseded all prior or contemporaneous oral or written communications, proposals and representations with respect to appellant's software or any other subject matter covered by the software licensing agreement. As a result, regardless of preemption, there could be no claim for unjust enrichment. Finally, even if preemption of the unjust enrichment claim were considered, appellant's minimal defense of the claim did not address the reasons why preemption law distinguishes between contracts implied in law and those based on either an express contract or one implied in fact. Specifically, contracts implied in law do not involve allegations of actual promises between the parties.

Such promises can provide the extra element required for avoiding preemption. Judgment affirmed in part, reversed in part, and remanded for further proceedings.

Case Name: *State of Ohio v. Brian K. Alford*  
Case No: Montgomery App. No. 29003; T.C. Case No. 1983-CR-2225  
Panel: Donovan, Hall, Welbaum  
Author: Jeffrey M. Welbaum  
Summary: The trial court did not err by denying appellant's petition for post-conviction relief without issuing findings of fact or conclusions of law. Appellant's petition was untimely and successive; therefore, the trial court lacked jurisdiction to consider the petition and had no duty to issue findings of fact and conclusions of law. Judgment affirmed.

Case Name: *State of Ohio v. Charles E. Burse, III*  
Case No: Montgomery App. No. 28976; T.C. Case No. 2019-CR-3539  
Panel: Tucker, Welbaum, Epley  
Author: Michael L. Tucker  
Summary: The trial court did not err by overruling appellant's motion to suppress. The trial court's admission of certain evidence was not an abuse of discretion. Trial counsel's failure to object to the admission of certain evidence did not constitute ineffective assistance of counsel. Finally, the jury verdicts were based upon sufficient evidence, and the verdicts were not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *Village of Saint Paris v. Michael Anthony Galluzzo*  
Case No: Champaign App. No. 2021-CA-7; T.C. Case No. 2020-CRB-764  
Panel: Donovan, Hall, Welbaum  
Author: Mary E. Donovan  
Summary: When the municipal court issued a warrant for appellant's arrest due to his failure to appear in court as ordered, the court did not hold a "hearing," and appellant was not entitled to separate notification before the court issued the warrant. The municipal court had jurisdiction over appellant and his misdemeanor offenses. The court properly overruled appellant's demurrer. Judgment affirmed.

Case Name: *State of Ohio v. C.S.*  
Case No: Montgomery App. No. 28963; T.C. Case No. 2019-CR-245  
Panel: Tucker, Welbaum, Epley  
Author: Christopher B. Epley  
Summary: State's appeal. The trial court did not have jurisdiction to grant appellee's application to seal his records, as appellee had a pending criminal case. Judgment reversed.

Case Name: *State of Ohio v. Denvil E. Rose*  
Case No: Champaign App. No. 2020-CA-28; T.C. Case No. 2020-CR-55  
Panel: Donovan, Hall, Welbaum  
Author: Michael T. Hall  
Summary: The trial court did not err in finding that appellant's prison sentence for aggravated drug possession was required by law to be served consecutively to his earlier sentence for failure to comply with an order or signal of a police officer. Judgment affirmed.