[Cite as *State v. Myers*, 2009-Ohio-4659.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 09AP-212
v.	:	(M.C. No. 2008 CR B 012441)
Benjamin K. Myers,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 8, 2009

Richard C. Pfeiffer, *Jr.*, City Attorney, *Lara N. Baker*, Chief Prosecutor, and *Melanie R. Tobias*, for appellee.

David C. Watson, for appellant.

APPEAL from the Franklin County Municipal Court.

SADLER, J.

{¶1} Defendant-appellant, Benjamin K. Myers ("appellant"), appeals from the judgment of the Franklin County Municipal Court convicting him under R.C. 2919.27(A) for violating a protection order.

{¶2} The undisputed factual and procedural history follows. On April 22, 2008, Tara Legg ("Legg") obtained an ex parte civil stalking protection order against appellant in

the Franklin County Court of Common Pleas pursuant to R.C. 2903.214. On May 20, 2008, both appellant and Legg appeared in the court of common pleas for a full hearing. On May 22, 2008, the court of common pleas journalized an agreed order of protection ("order") following an agreement between appellant and Legg.

{¶3} The order was made on a preprinted form entitled "Form 10 03-F Civil Stalking or Sexually Oriented Offense Protection Order (SSOOPO) Full Hearing Revised May 1, 2007."[1] The form identified Legg as the petitioner and appellant as the respondent. On the first page of the form the court ordered "[t]hat the above named Respondent be restrained from committing acts of abuse or threats of abuse against the Petitioner." Also on the first page, the order specified that its terms were effective until January 1, 2009.

{¶4} On the second page, the form contains the following language: "ALL OF THE PROVISIONS CHECKED BELOW APPLY TO THE RESPONDENT." Immediately below this language is a list of 12 different provisions. Each of these provisions has a box next to it, and some of them also contain blank lines to be filled in, in addition to the preprinted text. Boxes 1, 2, 5, 7, and 8 contain typed "Xs" and together they provide that: appellant was prohibited from harassing, threatening, stalking, following or abusing Legg (Box 1); appellant was prohibited from entering Legg's residence, school, business, and place of employment, including the grounds and parking lots surrounding those locations (Box 2); appellant was required to stay at least 500 feet away from Legg at all times (Box

[1] Form 10.03-F is the denomination of the form promulgated by the Supreme Court of Ohio for use as a Civil Stalking or Sexually Oriented Offense Protection Order (SSOOPO) Full Hearing pursuant to R.C. 2903.214. See http://www.supremecourt.ohio.gov/JCS/domesticViolence/protection_forms/stalkingForms/default.asp (last visited Aug. 25, 2009).

5); appellant was prohibited from initiating any contact with Legg by any means (Box 7); and appellant was prohibited from causing or encouraging anyone to do any act prohibited by the order (Box 8).

{¶5} Next to Box 10, the pre-printed form contains the following language: "It is further ordered (NCIC 08):." It appears that on the blank Form 10.03-F, this language is followed by a blank space. On the particular form involved in this case, the following language is typed into that space:

> No findings of fact or conclusions of law made by this order. Respondent makes no admissions. Respondent is not in violation of this order when attending classes and/or school activities and/or groups.
>
> Neither party shall attempt to contact the other either directly or indirectly. The only three mutual organizations the parties can attend are the Omnipresent Atheists, Society for Free Thought and Philosophy Club. If both parties attend a meeting they shall maintain a safe distance from each other and shall have no direct contact while at the meetings. Each party shall refrain from purposely attending or scheduling common classes with the other. The respondent is a chemistry major and the Petitioner is a philosophy major. Each shall attend their respective classes without interference of the other and be mindful of maintaining a safe distance from each other and having no direct contact. Remedy for this order shall be a Contempt of Court in front of the assigned Judge.

Despite the fact that the foregoing language was typed into the blank space underneath Box 10, there is no marking whatsoever in Box 10.

{¶6} On May 27, 2008, Legg filed a complaint in the Franklin County Municipal Court in which she alleged that appellant had violated the order. Following his arrest on the charge of violating a protection order, appellant pleaded not guilty and demanded a jury trial.

{¶7} On July 11, 2008, appellant filed a motion to dismiss the charge, arguing that the typewritten provisions under Box 10 of the order prohibited prosecution of him for violating the order's terms. He argued that, by its terms, the only remedy for a violation of the order would be a contempt sanction. In support of his contention that the parties intended to include the language under Box 10 in the order despite the fact that Box 10 is not checked or marked, appellant submitted the testimony of Magistrate Edwin Skeens, who had presided over the full hearing. Magistrate Skeens testified that the fact that language was typed into the space under Box 10 indicates that the parties intended for that language to be part of the order, and that the failure to check or otherwise mark Box 10 was likely a clerical mistake. Nonetheless, by written decision journalized on November 10, 2008, the municipal court denied appellant's motion to dismiss.

{¶8} Later, appellant waived his right to a jury trial, and the case proceeded to a bench trial on February 17, 2009. The trial court found appellant guilty of violating a protection order and imposed a suspended sentence of two days in jail, in addition to fines and costs. Appellant timely appealed and advances one assignment of error for our review, as follows:

> THE COURT LACKED JURISDICTION TO ADJUDICATE THIS CASE IN THAT THE PARTIES ARGEED [SIC], IN THE ORDER OF PROTECTION, THAT THE PROPER REMEDY FOR A VIOLATION OF THE ORDER WAS TO BE CONTEMPT OF COURT IN FRONT OF THE ASSIGNED JUDGE.

{¶9} In support of his assignment of error, appellant argues that the trial court lacked jurisdiction to convict him of a violation of R.C. 2919.27(A) because the order specifically stated that the sole remedy for violations thereof would be contempt of court

before the common pleas court judge who signed the order. He directs our attention to R.C. 2903.214, which provides, in pertinent part:

> (K)(1) A person who violates a protection order issued under this section is subject to the following sanctions:
>
> (a) Criminal prosecution for a violation of section 2919.27 of the Revised Code, if the violation of the protection order constitutes a violation of that section;
>
> (b) Punishment for contempt of court.

Appellant argues that when the trial court determined that it had jurisdiction over appellant's criminal charge, it impermissibly inserted an "and" into the statute where none appears. He maintains the absence of an "and" in this portion of the statute indicates that the parties were free to choose which of these remedies would apply for any violation of the order, and, as such, the agreement typed in under Box 10 was permissible and was binding upon the court whether or not Box 10 was checked.

{¶10} To resolve this assignment of error we need not determine whether it was fatal that Box 10 was not checked or whether, taking the order as a whole, the parties intended the language typed under Box 10 to be a part of their agreement. We note initially that R.C. 2903.214(K)(2) specifically allows for the imposition of both contempt sanctions and criminal prosecution upon a violation of an order of protection. That section provides, "The punishment of a person for contempt of court for violation of a protection order issued under this section does not bar criminal prosecution of the person for a violation of section 2919.27 of the Revised Code." This provision directly undercuts appellant's argument that R.C. 2903.214(K)(1) is intended to present two mutually exclusive remedies.

{¶11} Moreover, as plaintiff-appellee, State of Ohio, argues, to accept appellant's position would be to impermissibly insert the word "or" into R.C. 2903.214(K)(1) where none exists, which would be both contrary to standard rules of statutory construction and, as evidenced by the language of R.C. 2903.214(K)(2), contrary to the intent of the General Assembly. In any case, the municipal court's subject-matter jurisdiction over R.C. 2919.27 prosecutions is conferred by R.C. 1901.20(A)(1). That statute provides, "The municipal court has jurisdiction of * * * the violation of any misdemeanor committed within the limits of its territory."

{¶12} The territorial limits of the Franklin County Municipal Court consist of all of Franklin County, Ohio, and all areas within the corporate city limits of Columbus. *State v. Pausch* (Jan. 28, 1999), 10th Dist. No. 98AP-1096. It is undisputed that appellant was charged with a violation of R.C. 2919.27(A), a misdemeanor of the first degree, and that appellant committed the violation in the city of Columbus in Franklin County. Accordingly, the trial court had subject-matter jurisdiction over appellant's prosecution, notwithstanding any contrary agreement between appellant and Legg.

{¶13} For these reasons, appellant's single assignment of error is overruled, and the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BRYANT and CONNOR, JJ., concur.

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