

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2012-01-005
	:	<u>OPINION</u>
- vs -	:	10/8/2012
	:	
RICHARD T. KEEVER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM MASON MUNICIPAL COURT
Case No. 11CRB00061

Bethany S. Bennett, Mason City Prosecutor, Matthew P. Nolan, 5950 Mason Montgomery Road, Mason, Ohio 45040, for plaintiff-appellee

Jeffrey W. Stueve, William G. Fowler, 12 West South Street, Lebanon, Ohio 45036, for defendant-appellant

PIPER, J.

{¶ 1} Defendant-appellant, Richard Kever, appeals a decision of the Mason Municipal Court ordering several probation terms following Kever's guilty plea and convictions for three counts of menacing.

{¶ 2} Kever lived with his mother in a subdivision in Mason, Ohio. During three months in 2010, the Mason Police Department received multiple complaints that Kever was

harassing and stalking women in his subdivision. The harassment/stalking complaints included allegations that Keever would: follow women to their homes and then watch the women from the street, yell obscenities at the women, drive slowly back and forth in front of the women's houses, follow women as they walked around the subdivision, and make threatening gestures toward the women.

{¶ 3} When questioned about his actions, Keever stated that he was not yelling at the women, but instead, was yelling at an ex-girlfriend while talking to her on his cell phone. Keever also claimed that he was not following the women around the neighborhood, but instead, was test driving his car after making repairs. Keever offered several other excuses, but did not change his behavior. After several warnings from the police to cease his threatening behavior went unheeded, Keever was charged with three counts of menacing by stalking, a first-degree misdemeanor.

{¶ 4} Keever was incarcerated in the Warren County Jail from January 26, 2011, to February 10, 2011, and was released once he filed a bond. Keever was then placed on house arrest from February 10, 2011, to May 31, 2011, and was required to wear a device on his ankle to track his movement in order to assure that he was not in close proximity to the victims.

{¶ 5} Keever ultimately pled guilty to three menacing counts after lengthy negotiations with the state. The state agreed to charge Keever with the lesser crime of menacing, a fourth-degree misdemeanor, and dismissed the menacing by stalking counts. Keever was aware that the state was requesting probation, a no-contact order with all of the victims, as well as a prohibition to prevent him from living in close proximity to the victims. The trial court ordered a presentence investigation, and both Keever and the state submitted sentencing memoranda. The victims spoke to how Keever's actions impacted their lives, and some submitted victim-impact statements as part of the presentencing investigation process.

{¶ 6} The trial court sentenced Keever to five years of reporting probation, and set forth several conditions of probation. Those conditions included a requirement that Keever submit to a mental health evaluation, Keever could not have any contact with any of the victims, a prohibition against Keever being within 1,000 yards of the victims' residences, as well as a continued use of the ankle monitor for one year to ensure that Keever stay away from the victims. Keever appeals the decision of the trial court setting forth the probation conditions, raising the following assignments of error:

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT'S CONDITION OF PROBATION IS AN ABUSE OF DISCRETION.

{¶ 9} Keever argues in his first assignment of error that the trial court abused its discretion in setting the terms and conditions of his community control.

{¶ 10} The misdemeanor community control sanctions statute, R.C. 2929.25, states, in pertinent part, that in the "interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender" and the "offender's compliance with the additional requirements also shall be a condition of the community control sanction imposed upon the offender." R.C. 2929.25(C)(2).

{¶ 11} The Ohio Supreme Court has set forth a test to determine whether a probation condition is proper. *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888. According to the *Talty* test, courts should consider whether the probation condition "(1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Id.* at ¶ 12. An appellate court must also consider that the community control conditions cannot be overly broad so as to unnecessarily impinge upon the probationer's liberty. *Id.* at ¶ 13. Appellate courts review the

trial court's imposition of community control conditions under an abuse of discretion standard. *Id.* at ¶ 10. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 130.

{¶ 12} Keever argues that the terms of his probation, mainly that he not be within 1,000 yards of any of the victims' residences, fails the *Talty* test. In support of his argument, Keever asserts that prohibiting him from being within 1,000 yards of the victims requires him to move from his mother's home and to move away from "his support system," thus unnecessarily impinging upon his liberty. We disagree.

{¶ 13} The record indicates that Keever was living with his mother at the time he began following the women and making threats to them. Keever disregarded multiple orders from police directing him to stop frightening and intimidating the women, and instead, continued his menacing behavior. Even after pleading guilty, Keever maintained that he had a valid reason to explain each of the menacing allegations, and he refused to accept responsibility for his actions or to show any remorse for the impact his behavior had on the women. Keever also proved to be "difficult" when completing his mental health assessment and was often evasive when the interviewer would try to learn more information about Keever's mental state.

{¶ 14} Regarding the first prong of the *Talty* test, the trial court's order established terms that assist in rehabilitating Keever. First, the trial court ordered Keever to have a mental health assessment to perhaps identify any mental health issues that may have caused or contributed to Keever's behavior. While Keever was "difficult" to interview and was essentially uncooperative by being evasive, the trial court's order was nonetheless intended to identify any mental health issues facing Keever so that he could seek appropriate treatment. In fact, the trial court ordered Keever to follow through on any such treatment if so recommended by the involved mental health professional. Such treatment was assuredly an

attempt by the trial court to place Keever on the road to rehabilitation.

{¶ 15} The trial court's second probation term included a prohibition zone, which forbids Keever from being within 1,000 yards of any of the victims' residences. Given the proximity of the victims' homes to the home Keever shared with his mother, the order therefore required Keever to move from his mother's home and away from the subdivision. A 1,000-yard no-contact zone is larger than that usually imposed in no-contact orders, and was larger than the state requested in its sentencing memorandum.¹ Nonetheless, the size of the no-contact zone is directly related to the fact that Keever's menacing behavior was spread among *several* women in his neighborhood, instead of one victim. The trial court was presented with a map of the subdivision, as well as the location of the victims' homes, and was within its discretion to require Keever to stay away from the victims' homes and the surrounding properties, roads, and sidewalks found within 1,000 yards of the victims' residences.

{¶ 16} While the order essentially forced Keever to move from his mother's home, the record indicates that Keever directed his menacing behavior to women who specifically lived in the subdivision and near his mother's home. Keever's behavior toward the women in his neighborhood did not extend to women of the general population, and therefore the trial court could reasonably infer that removing Keever from the neighborhood would also remove the set of circumstances that prompted his behavior and therefore allow Keever to focus on his rehabilitation.

{¶ 17} While Keever argues that he is entitled to a smaller no-contact zone distance, such as 1,000 *feet* or less, we are cognizant of the fact that some of Keever's actions

1. The state suggested a 1,000-foot prohibition zone. However, even if the court had ordered Keever to move 1,000 feet from each victim's residence, Keever would still have been required to move from his mother's home, as some of the victims' homes are within 1,000 feet of the home Keever shared with his mother.

traversed the subdivision, and that such behavior was not confined to readily calculable distances from the victims' homes. For example, Keever would follow women who were walking in the subdivision, and Keever would drive throughout the subdivision to follow these women. The trial court took into consideration the victim-impact statements, and was not unreasonable in ordering a no-contact zone large enough to ensure that the victims could make use of their entire subdivision should they choose to exercise, walk with their children or pets, or simply enjoy the entirety of their neighborhood. Keever's actions and behavior should not confine these victims to their own homes, or continue to place the women in fear of encountering Keever should they walk further than 1,000 feet or less from their homes.

{¶ 18} Keever did not confine his menacing behavior to one victim alone, one residence alone, or even to one portion of the subdivision alone. Instead, Keever's menacing behavior affected multiple victims, and encompassed a larger area of the subdivision than would have occurred had he focused his behavior on only one victim. Perhaps a smaller zone would have been appropriate had there been a single victim, or an area more easily calculated where Keever directed his behavior. However, Keever frightened and intimidated several women in various locations throughout the subdivision by following them in his car, stopping in front of their residences, and yelling at the victims while traveling around the subdivision. The court was therefore within its discretion to offer a protective zone in which each victim would be shielded. We simply cannot say that the 1,000-yard no-contact zone is so overly broad so as to unnecessarily impinge upon Keever's liberty.

{¶ 19} The court also ordered that Keever not have any other violations or convictions, and that he remain on the ankle-monitoring device for a year. The orders, other than the ankle monitoring, included a five-year time frame. These terms were designed to allow the court to monitor Keever to ensure that he does not revert to his menacing behavior, therefore aiding in his rehabilitation. All of the terms of Keever's probation are reasonably related to

his rehabilitation, and therefore fulfill the first prong of the *Talty* test.

{¶ 20} The second prong of *Talty* requires that the probation conditions have a relationship to the crime. The record indicates that Keever committed multiple acts of menacing against several women in his subdivision. While Keever ultimately pled guilty to three counts, the Mason police responded to multiple complaints spanning several months where Keever would harass and threaten the women. Therefore, removing Keever from the subdivision through the no-contact zone and the ankle monitor are directly related to stopping Keever's criminal behavior and protecting the victims from Keever.

{¶ 21} The third *Talty* prong requires that the probation conditions relate to the criminal conduct, or be reasonably related to future criminality, as well as serving the statutory ends of probation. The record indicates that the trial court's orders were meant to protect the victims by monitoring Keever and prohibiting him from being within 1,000 yards of the victims. Keever's menacing behavior was concentrated against the women of his subdivision. Therefore, removing Keever from the subdivision is a reasonable way to ensure that he cannot continue his menacing behavior, thus serving the statutory ends of probation.

{¶ 22} After reviewing the record, we cannot say that the trial court abused its discretion in ordering the terms of Keever's probation. As such, Keever's first assignment of error is overruled.

{¶ 23} Assignment of Error No. 2:

{¶ 24} THE TRIAL COURT ERRED BY FAILING TO NOTIFY THE APPELLANT OF THE DURATION OF A CONDITION OF PROBATION.

{¶ 25} Keever argues that the trial court failed to advise him of the duration of the no-contact order and therefore failed to fulfill the requirements of R.C. 2929.25(A)(3).

{¶ 26} According to R.C. 2929.25(A)(3), "at sentencing, if a court directly imposes a community control sanction or combination of community control sanctions pursuant to

division (A)(1)(a) or (B) of this section, the court shall state the duration of the community control sanctions imposed * * *."

{¶ 27} Despite Kever's argument, the record indicates that the court clearly told him that the term of the no-contact order would be five years. During the sentencing hearing, the trial court stated, "I can restrict you from, it is within the purview of this court to restrict you from living within a certain distance from the residence. At least for a period of time and that period of time would be related to the maximum period of time of probation." The court later stated,

the maximum amount of probation that I can give you is five years and that's what I'm going to do. I'm going to impose a term of five years' probation. It is going to be reporting. You are going to have an updated mental health evaluation because that's what was recommended, and you will have that with Dr. Reed. If Dr. Reed indicates that you need further counseling or treatment you're to do it. You're to have no contact whatsoever with any of the victims. That includes calling them, sending them letters driving by their house. You're not to have any contact with them, do you understand that?

{¶ 28} After this exchange, Kever stated that he understood the court's orders, and did not at any time indicate that he was unsure as to how long the no-contact order was in place. The trial court's sentencing entry also states that Kever "shall observe the terms of" probation for a "period of 1825 days" (five years), and then listed the terms of probation including "no contact with any victims in anyway [sic], shape or form."

{¶ 29} As the record indicates that the trial court informed Kever that his no-contact order would last for five years, the court complied with R.C. 2929.25(A)(3). Kever's second assignment of error is therefore overruled.

{¶ 30} Assignment of Error No. 3:

{¶ 31} ORDERING THE MAXIMUM TERM OF PROBATION IN THE CASE SUB JUDGE IS AN ABUSE OF DISCRETION.

{¶ 32} Keever argues in his final assignment of error that the trial court abused its discretion by ordering him to have a five-year probation period, which is the maximum amount of time allowed by statute.

{¶ 33} According to R.C. 2929.25(A)(2), "the duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years." Keever argues that while the statute permits a five-year probation period, the trial court should have ordered a lesser period because none of the women were physically harmed and he did not have an extensive criminal history.

{¶ 34} However, the trial court was statutorily permitted to order a five-year probation period, and chose to impose community control rather than the possible jail sentence associated with menacing. The trial court also heard evidence regarding the impact Keever's actions had on the women of his subdivision. Multiple victims spoke or wrote about their experiences, and the trial court ordered and considered a full presentence investigation before passing sentence. Given the serious nature of Keever's menacing behavior, his unwillingness to accept responsibility for his actions, as well as the impact his behavior had on the victims, we cannot say that the trial court erred in ordering a five-year probation period. As such, Keever's final assignment of error is overruled.

{¶ 35} Judgment affirmed.

HENDRICKSON, P.J., and RINGLAND, J., concur.