[Cite as *State v. Beeler*, 2015-Ohio-668.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 14CA3454
	:	
vs.	:	
	:	DECISION AND JUDGMENT
REBECCA K. BEELER,	:	ENTRY
	:	
Defendant-Appellant.	:	**Released: 02/13/15**

APPEARANCES:

Timothy Young, Ohio State Public Defender, and Ben A. Rainsberger, Assistant State Public Defender, Chillicothe, Ohio, for Appellant.

Sherri K. Rutherford, Director of Law, City of Chillicothe, and Carrie L. Rowland, Assistant Law Director, Chillicothe, Ohio, for Appellee.

McFarland, A.J.

{¶1} Rebecca K. Beeler (Appellant) appeals from the sentence and judgment of the Chillicothe Municipal Court filed May 29, 2014. On appeal, Appellant contends the trial court erred by exercising jurisdiction over Appellant contrary to R.C. 2951.022. Upon review, we find no merit to Appellant's assignment of error. Accordingly, we affirm the judgment of the trial court.

FACTS

{¶2} Appellant was convicted of a violation of R.C. 4511.19(A)(1)(d), operating a vehicle under the influence (OVI), in the Chillicothe Municipal Court (Ross County, Ohio) on January 28, 2011. Her sentence included being placed on community control. Appellant was ordered to participate and complete alcohol counseling and to "stay out of trouble."

{¶3} The State filed a complaint for violation of community control sanctions on March 28, 2011. Through the probation department, the State alleged Appellant violated community control by failing to complete court-ordered counseling and by failing to make payments toward fines and costs.[1] On January 14, 2013, Appellant was convicted of another OVI offense, a violation of R.C. 4511.19(A)(1)(a), in the Portsmouth Municipal Court (Scioto County, Ohio). Appellant was sentenced to community control by the Portsmouth Municipal Court on January 14, 2013.[2]

{¶4} The record indicates another complaint was filed for violation of community control sanctions (dated February 15, 2014) due to allegations that Appellant was convicted of OVI in the Portsmouth Municipal Court and on May 29, 2014, a hearing was held. Appellant stipulated to the "factual underpinnings" of the violation and indicated the intent to appeal on the

[1] The warrant for Appellant's violation was not served upon her until February 13, 2013.
[2] By the passage of Am.Sub.S.B. No.2 in 1995, community control replaced probation as a possible sentence, effective July 1, 1996. See *State v. Talty*, (2004) 103 Ohio St.3d 177, 814 N.E.2d 1201, at ¶ 16.

issue of the trial court's concurrent jurisdiction. The court found Appellant had violated community control. The court also stated :

> " * * * With respect to the motion that this Court has, doesn't have authority to supervise her since she is on probation in Portsmouth, a couple of things. The statute is difficult for me to understand, at least. It gives several scenarios, but one of the scenarios it doesn't talk about is when a person is under a community control sanction in two municipal courts in different counties, which is what we have here. And the other thing is, she was supervised by this Court, um, and then she gets another case in another county. It's really hard for me to think that this legislature really intended that at that point, I lose jurisdiction because she's been convicted in another county, to supervise her on my community control sanction. It may be what the legislature intended, just seems odd to me that that would be the case. So because of those reasons, the Court overrules the objection, Mr. Rainsberger, and we'll proceed with the sentencing."

{¶5} Appellant was sentenced to 30 days in the Ross County Jail. This timely appeal followed.

ASSIGNMENT OF ERROR

> "I. THE COURT BELOW ERRED BY EXERCISING JURISDICTION OVER APPELLANT CONTRARY TO O.R.C. §2951.022."

A. STANDARD OF REVIEW

{¶6} The decision whether to revoke probation is within the trial court's discretion. *State v. Johnson,* 7th Dist. Mahoning No. 09-MA-94, 2010-Ohio-2533, ¶ 10; *State v. Ritenour,* 5th Dist. No. 2006AP-0002, 2006-Ohio-4744, at ¶ 37. Thus, a reviewing court will not reverse a trial court's

decision absent an abuse of discretion. *Johnson, supra; State v. Dinger*, 7th Dist. No. 04CA814, 2005-Ohio-6942, at ¶ 13. Abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is arbitrary, unreasonable, or unconscionable. *Johnson, supra; State v. Maurer,* 15 Ohio St.3d 239, 253, 473 N.E.2d 768 (1984). In determining whether there was a probation violation, the trial court need not find the probation violation established beyond a reasonable doubt. *Johnson, supra,* at ¶ 11; *State v. Wallace,* 7th Dist. Mahoning No. 05-MA-172, 2007-Ohio-3184, at ¶ 16.

{¶7} As this Court has noted, a "manifest weight" standard of review is used to assess the evidence adduced at a probation revocation hearing. *State v. Baker,* 4th Dist. Scioto No. 09CA3331, 2010-Ohio-5564, ¶ 11. See *State v. Belcher*, 4th Dist. Lawrence No. 06CA32, 2007-Ohio-4256, at ¶ 12; *State v. Wolfson,* 4th Dist. Lawrence No. 03CA25, 2004-Ohio-2750, at ¶ 7. In other words, a judgment will not be reversed if some competent, credible evidence supports the trial court's findings. *Baker, supra*. See *Bryan-Wollman v. Domonko,* 115 Ohio St.3d 291, 2008-Ohio-4918, 874 N.E.2d 1198, at ¶ 3; *State v. Wilson*,113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, at ¶ 21; *C.E. Morris Co. v. Foley Constr. Co.,* 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), at the syllabus. We further point out that this

standard of review is highly deferential and even "some" evidence is sufficient to support a trial court's judgment and prevent a reversal. *Baker, supra*. See *Barkley v. Barkley,* 119 Ohio App.3d 155, 159, 694 N.E.2d 989 (1997); *Drydek v. Drydek,* 4th Dist. Washington No. 09CA29, 2010-Ohio-2329, at ¶ 16.

{¶8} Ordinarily, we would utilize the above standards in considering an appeal of a trial court's ruling on a probation revocation. However, Appellant's sole assignment of error raises a jurisdictional question. Whether a court has jurisdiction is a question of law we review de novo. *Cleveland v. Kutash,* 8th Dist. Cuyahoga No. 99509, 2013-Ohio-5124, ¶ 8; *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d 1136, ¶ 4-5.

B. LEGAL ANALYSIS

{¶9} " * * * Jurisdiction * * * is the 'right and power to * * * apply the law.' " *State v. Rode,* 11th Dist. Portage No. 2010-P-0015, 2011-Ohio-2455, ¶ 15, quoting The American Heritage Dictionary, Second College Edition (1982), 694. "Subject-matter jurisdiction" is used when referring to a court's authority to act. *Cleveland v. Persaud,* 6 N.E.3d 701, (Feb. 10, 2014), ¶ 16. "Subject-matter jurisdiction" of a court connotes the power to hear and decide a case upon its merits, and defines the competency of a court

to render a valid judgment in a particular action. *Id.* A judgment rendered by a court lacking subject-matter jurisdiction is void. *Kutash, supra; Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph three of the syllabus.

{¶10} The judicial power of the state is vested in "such other courts inferior to the supreme court as may from time to time be established by law." Section 1, Article IV, Ohio Constitution. *Rode, supra,* at ¶ 16. The constitution gives the General Assembly the power to provide for municipal courts and their jurisdiction. *Rode, supra*; *Behrle v. Beam,* 6 Ohio St.3d 41, 42, 451 N.E.2d 237 (1983). Unlike courts of common pleas, which are created by the Ohio Constitution and have statewide subject-matter jurisdiction, municipal courts are statutorily created, and their subject matter jurisdiction is set by statute. *Kutash, supra,* at ¶ 10. Municipal courts, as they exist today in Ohio, were established in 1951 with the enactment of R.C. Chapter 1901. *Id. Rode, supra.*

{¶11} The Supreme Court of Ohio has recently discussed the issue of subject-matter jurisdiction within the context of community control violations, in *State ex rel. Hemsley v. Unruh,* 128 Ohio St.3d 307, 2011-Ohio-226, 943 N.E.2d 1014. See *State v. Meyer*, 9th Dist. Summit No. 26999, 18 N.E.3d 805, 2014-Ohio-3705, ¶ 12. In *Hemsley, supra,* the high

court recognized that a judge may conduct a community control violation hearing where the court does not "patently and unambiguously lack jurisdiction." *Id.* at ¶ 14. See also, *State ex rel. Carroll*, 8th Dist. Cuyahoga No. 79305, 2001 WL 273619, *1.

{¶12} Appellant argues, pursuant to R.C. 2951.022, the trial court erred by exercising jurisdiction over her to conduct the revocation hearing. Appellant points out she was first convicted in Chillicothe Municipal Court in Ross County and then subsequently convicted in Portsmouth Municipal Court in Scioto County. She also indicates she is a resident of Scioto County.[3] R.C. 2951.022(A), supervision of concurrent supervision offender, provides:

> "(1) '[C]oncurrent supervision offender' means any offender who has been sentenced to community control for one or more misdemeanor violations or has been placed under a community control sanction pursuant to section 2929.16, 2929.17, 2929.18, or 2929.20 of the Revised Code and who is simultaneously subject to supervision by any of the following:
>
> (a) Two or more municipal courts or county courts in this state…."

{¶13} The statute further provides:

> "(B)(1) Except as otherwise provided in divisions (B)(2)(3), and (4) of this section, a concurrent supervision offender shall be supervised by the court of conviction that imposed the

[3] Appellant indicated on the affidavit of indigency and on the OVI citation that she resides in Scioto County, Ohio. We observe no stipulation on the record to this particular fact.

> longest possible sentence of incarceration and shall not be supervised by any other court.
>
> (2) In the case of a concurrent supervision offender subject to supervision by two or more municipal or county courts in the same county, the municipal or county court in the territorial jurisdiction in which the offender resides shall supervise the offender. In the case of a concurrent supervision offender subject to supervision by a municipal court or county court and a court of common pleas for two or more equal possible sentences, the municipal or county court shall supervise the offender. In the case of a concurrent supervision offender subject to supervision by two or more courts of common pleas in separate counties in this state, the court that lies within the same territorial jurisdiction in which the offender resides shall supervise the offender.

{¶14} Appellee urges the trial court's decision be affirmed because in the absence of controlling or persuasive case law on this issue, the trial court was correct in the assumption that it would not lose jurisdiction simply because Appellant was convicted of the same offense elsewhere. Generally, the court with the "longest possible sentence" shall supervise the offender to the exclusion of all others. R.C. 2951.022(B)(1).

{¶15} We observe first that Appellant is a concurrent supervision offender. She was convicted by two municipal courts in two separate counties. Appellant contends that the legislature did not address the situation, as here, where a concurrent supervision offender who has been convicted by two municipal courts in two separate counties. Both parties contend that R.C. 2951.022(B)(2) is difficult to decipher in this particular

fact scenario. Appellant clearly fits the criteria of a "concurrent supervision offender" pursuant to R.C. 2951.022(A)(1). However, she simply does not fit into any of the 3 descriptions of concurrent supervision offenders subject to supervision in: (1) two or more municipal or county courts in the same county; (2) a municipal court or county court, and a court of common pleas; or (3) two or more courts of common pleas in separate counties in this state, pursuant to R.C. 2951.022(B)(2). Although the legislature did not address Appellant's situation within the statute (that of a concurrent supervision offender convicted by two municipal courts in two separate counties, each with the same possible sentence of incarceration), the statute is not necessarily ambiguous.

{¶16} The language of R.C. 2951.022(B)(4) provides:

> "(a) The judges of the various courts of this state having jurisdiction over a concurrent supervision offender *may* agree by journal entry to transfer jurisdiction over a concurrent supervision offender from one court to another court in any manner the courts consider appropriate, *if the offender is supervised by only a single supervising authority at all times.* An agreement to transfer supervision of an offender under division (B)(4)(a) of this section shall not take effect until approved by every court having authority to supervise the offender and may provide for the transfer of supervision to the offender's jurisdiction of residence whether or not the offender was subject to supervision in that jurisdiction prior to transfer. In the case of a subsequent conviction in a court other than the supervising court, the supervising court may agree to accept a transfer of jurisdiction from the court of conviction prior to

> sentencing and proceed to sentence the offender according to law." (Emphasis added).

{¶17} In determining legislative intent, courts must first look to the plain language of a statute. *State ex rel. Ohio Inst. for Fair Contracting v. Porter*, 10th Dist. Franklin No. 13AP776, 2014-Ohio-2194, ¶ 7. See, also *State ex rel. Burrows v. Indus. Commission*, 78 Ohio St.3d 78, 81 (1987). If the meaning of a statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary. *Id.* Unambiguous statutes are to be applied according to the plain meaning of the words used and courts are not free to delete or insert other words. *Id.*

{¶18} Here we note the Chillicothe Municipal Court and the Portsmouth Municipal Court both have jurisdiction over Appellant as a concurrent supervision offender. R.C. 2951.022(B)(4)(a) provides that the judges of the various courts of the state "may agree" to transfer jurisdiction "if the offender is supervised by only a single supervising authority at all times." By the use of the word "may," it is not mandatory that the courts "agree" to transfer jurisdiction from one to another. The record here does not reflect any agreement was made.

{¶19} R.C. 2951.022(B)(4)(a) further states that judges of the various courts of this state having jurisdiction over a concurrent supervision offender "*may agree* * * * to transfer jurisdiction * * * from one court to another

court * * * *if the offender is supervised by only a single supervising authority at all times."* This language leads to the conclusion that there are times when, as here, an offender may not be supervised by only a "single supervisory authority."

{¶20} The situation in which an offender reoffends in another county is not unique or uncommon. Perhaps that is why the legislature chose not to address such factual scenarios within the statute. Anyone who has worked in the municipal court system is aware of situations such as the traffic offender who has various convictions in multiple counties due to traveling for out-of-town work purposes; or, the offender who leads authorities on high speed chases through adjoining or multiple counties, thus incurring infractions of the law within the other counties; or, the offender who commits a domestic violence offense with a live-in partner and within a year's time has another live-in partner and another conviction in another county. Unfortunately, these situations do occur. We agree with the trial court's attempt to express its belief, herein, that the legislature did not intend that a municipal court lose jurisdiction to supervise an offender on community control just because the offender is subsequently convicted in another county, unless there is an express agreement, pursuant to R.C. 2951.022(B)(4)(a) and implemented pursuant to R.C. 2951.022(C).

{¶21} Appellant correctly points out R.C. 2951.022(B)(4) provides, as follows, for certain factors which must be considered in determining whether a court maintains authority to supervise an offender:

> "(b) If the judges of the various courts of this state having authority to supervise a concurrent supervision offender cannot reach agreement with respect to the supervision of the offender, the offender may be subject to concurrent supervision in the interest of justice upon the courts' consideration of the provisions set forth in division (C) of this section."

{¶22} R.C. 2951.022(C) provides:

> "In determining whether a court maintains authority to supervise an offender or transfers authority to supervise the offender pursuant to division (B)(3) or (4) of this section, the court shall consider all of the following:
>
> (1) The safety of the community;
>
> (2) The risk that the offender might reoffend;
>
> (3) The nature of the offenses committed by the offender;
>
> (4) The likelihood that the offender will remain in the jurisdiction;
>
> (5) The ability of the offender to travel to and from the offender's residence and place of employment or school to the officers of the supervising authority;
>
> (6) The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts having supervising authority;
>
> (7) Any other factors consistent with the purposes of sentencing."

{¶23} Appellant argues these factors were not considered because the trial court did not address the factors and make a finding that in "the interests of justice" the Chillicothe Municipal Court should maintain jurisdiction. However, Appellee argues the trial court considered these factors when determining jurisdiction was still present under the statute. Appellee points out that the factors of R.C. 2951.022(C) are inherently present as: (1) the safety of the community is a risk; (2) Appellant has reoffended and is likely to reoffend a third time; and, (3) the nature of the offenses are the same.

{¶24} Accordingly, our analysis ends after consideration of the language of R.C. 2951.022(B)(4)(a), and we need not consider Appellant's arguments regarding the R.C. 2951.022(C) factors. In the absence of other controlling authority or guidance, we find the plain language of the statute allows the Chillicothe Municipal Court to retain its authority to supervise Appellant, a concurrent supervision offender in two separate municipal courts in two separate counties. As such, we further find the trial court properly exercised its jurisdiction to conduct the community control hearing. We hereby overrule Appellant's sole assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Chillicothe Municipal Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & Harsha, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland,
Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.